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THE LAW AND PRACTICE OF JOINT-STOCK AND OTHER PUBLIC COMPANIES:

INCLUDING THE

Statutes, with Notes,

A COLLECTION OF

PRECEDENTS OF MEMORANDA AND ARTICLES OF ASSOCIATION,

AND ALL THE OTHER FORMS REQUIRED IN

MAKING, ADMINISTERING, AND WINDING UP A COMPANY

BY

SIR HENRY THRING, K.C.B.,

OF THE INNER TEMPLE, THE PARLIAMENTARY COUNSEL.

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ERRATA.

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41 Note (*c*) after "*Wilson's case*" for "20 L. J." read "20 L. T. (N. S.)"

87 Note (*a*) after "*Mathewman's case*" for "3 Eq. 761" read "3 Eq. 781."

97 Note (*b*) for "2, Kent Comm. 294" read "Kent Comm. II. 294."

99 Note (*a*) before "H. & M. 786" insert "1."

109 In line two of note (*a*) for "3 Ch." read "9 Ch."

114 In line two of note (*d*) for "12 Eq. 490" read "12 Eq. 246."

117 Note (*e*) for "*Dalton*" read "*Dutton*."

450 For "part II. of this App." read "App. II."

ADDENDA.

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41. add to the cases in note (*a*), relating to conditional application for shares, *Wood's case*, 15 Eq. 236; *Perrett's case*, ib., 250

61. *Merry* v. *Nicholls*, 7 Ch. 733, has been affirmed by the House of Lords, 23 W. R. 663.

75. add to note (*b*). "A shareholder who has not instituted proceedings of his own, but in an action for calls has obtained a verdict on the plea of misrepresentation, is not entitled on that ground to have his name removed *Stevenson's case*, 16 W. R. 95."

78. add to note (*a*) "A shareholder may file a bill on behalf of himself and all other shareholders in the company, to set aside a forfeiture of his shares. *Sueny* v. *Smith*, 7 Eq 324."

92. see further as to foreign judgments, *Schibsby* v. *Westenholz*, 16 L. R., 6 Q. B 155; *Copin* v *Adamson*, L. R, 9 Ex. 345; *Ocksenbein* v. *Papelier*, 9 Ch. 695.

103. add to cases cited in note (*a*). "Change in nature of business. *Featherstonhaugh* v. *Lee Moor Porcelain Clay Co*, 1 Eq 318."

104 add to cases cited in note (*a*). *Peruvian Rys. Co.* v. *Thames &c., Co.*, 2 Ch. 617.

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105. note (*b*). See *Harrison* v. *Mexican Ry. Co.*, 19 Eq. 358.

106. add to *Imp. Land Co. of Marseilles*, and the other cases in note (*b*). "*Brunton's claim*, 19 Eq. 302."

115. add to note (*a*). "The cases before V.-C. Malins of *Featherstone* v. *Cooke*, 21 W. R. 835; and *Trade Auxiliary Co.* v. *Vickers* ib., 837 can scarcely (it is conceived) be supported."

119. the view urged in the text that the personal liability of directors to their shareholders depends on the law of agency derives confirmation from the language of Lord Cairns and L. J. James, in the case of *Parker* v. *McKenna*, 10 Ch. 96. In that case directors of a banking company were compelled to refund profits improperly made by them on certain dealings with a new issue of shares of the bank; and the judgment was founded not on any doctrines of trusteeship, but simply on the well-established principle that an agent shall not make a surreptitious profit out of his agency. Lord Cairns said, (p. 118)—"Now, the rule as I understand it as to agents, is not a technical or arbitrary rule. It is a rule founded upon the highest and truest principles of morality. No man can in this Court, acting as an agent, be allowed to put himself into a position in which his interest and his duty will be in conflict. If Stock had bought these shares and paid for them and become the absolute owner of them, the directors were as free as any person in the market to go to Stock and to become the purchasers from him of those shares. The agency in that case would have been over, and there would have been no longer any conflict between interest and duty. Here the agency has not terminated. The Court will not inquire and is not in a position to ascertain whether the bank has lost or not lost by the acts of the directors. All that the Court has to do is to examine whether a profit has been made by an agent without the knowledge of his principal, in the course and execution of his agency, and the Court finds, in my opinion, that these agents in the course of their agency have made a profit, and for that profit they must in my opinion, account to their principal."

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Lord Justice James said, (p. 124), "I do not think it is necessary, but it appears to me very important that we should concur in laying down again and again the general principle that in this Court no agent, in the course of his agency in the matter of his agency, can be allowed to make any profit without the knowledge and consent of his principal; that this rule is an inflexible rule, and must be applied inexorably by this Court, which is not entitled in my judgment to receive evidence, or suggestion or argument, as to whether the principal did or did not suffer any injury in fact by reason of the dealing of the agent; for the safety of mankind requires that no agent shall be able to put his principal to the danger of such an inquiry as that." See also *Ottoman Bank* v. *Farley*, 17 W. R. 761.

124. note (*c*). The House of Lords has now conclusively decided in the case of *Ashbury, &c., Company* v. *Riche* (W. N. 19th June, 1875), after a division of opinion in the Courts below, that a contract beyond the scope and objects of a company as defined by its memorandum of association under the Act of 1862, cannot by any attempted subsequent ratification of the shareholders, even though unanimous, be made legally binding on the company.

306. add to note to s. 79. "The petition must allege facts which justify a winding-up order; it is not enough for a sufficient case to be made out in evidence." *Wear Engine Works Co.*, 10 Ch. 188.

309. add to note to sub-sec. (1) of s. 80. "Omission to pay a debt within the three weeks is not neglect within the meaning of this sub-sec., unless there is no reasonable cause for the omission, and where the debt was *bonâ fide* disputed, and the creditor's petition was in the opinion of the Court only presented to put pressure on the company, the petition was dismissed by the M. R. with costs. *London and Paris Banking Corporation*, 19 Eq. 444."

311. in last line add "and see *Steam Stoker Co.*, 19 Eq. 416."

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313, add to note on s. 82. "On a winding up petition being presented by a shareholder, the secretary of the company filed an affidavit in opposition, and being called on in cross-examination before a special examiner to produce the books of the company refused to do so. The V.-C. made an order that the company by their secretary should produce on his cross-examination the books and papers which they had notice to produce. *Held*, on appeal, that the order was right both in form and substance." *Emma Mining Co.*, 10 Ch. 194.

331, note to s. 101. *Barnett's* case is now reported, 19 Eq. 449.

COMPENDIUM

OF THE

LAW AND PRACTICE

OF

JOINT STOCK COMPANIES,

And other Associations.

PART I.

CHAPTER I.

HISTORY OF LEGISLATION.

THE object of the following chapter is to give a short history of the origin, progress, and existing state of the Statutory Law relating to trading companies and other public associations. To explain that law, it is necessary to state the principles of the common law with respect to private partnerships—for the difficulties which gave rise to the interference of the Legislature were caused by the persistence of the Courts in placing large public companies on the same level as private partnerships, and applying to associations consisting of numerous members, and managed by boards of direc-

Object of chapter, to give history of statutory law.

History of statutory law involve knowledge of common law

tors, rules of procedure and principles of law adapted only to firms composed of a few active partners.

Definition of partnership

Partners, in the ordinary acceptation of the term, are two or more persons engaged in any joint enterprise; partners, in contemplation of law, are two or more persons engaged in a joint enterprise of such a nature that the law confers on each person engaged an implied authority to bind his companions by any contract which is necessary or proper for carrying the enterprise into effect.

The enterprise which gives so large an authority must be one of which gain is the object; for if it be charitable, or formed for any other purpose whatever except that of making a profit, the adventurers in it neither incur the liabilities nor enjoy the rights of partners (*a*).

Example in illustration of the proposition that participation in profit constitutes a partnership.

For example, John Jones and Robert Brown combine together to build a school, found a hospital, or set up a club, and both engage most actively in the undertaking; there is no legal partnership between them, because neither party can in any event become entitled to any profit. On the other hand, if John Jones, living at Brighton, lend 10,000*l.* to Robert Brown, on condition that Robert Brown pay him one-half of the profits made in his business as a mer-

(*a*) "Charity," *Glencster* v. *Hunter*, 5 C. & P. 62; *Lake* v. *Duke of Argyll*, 6 Q. B. 477; "Club," *Flemyng* v. *Hector*, 2 M. & W. 172; *Todd* v. *Emly*, 8 M. & W. 504; *the St. James's Club*, 16 Jur. 1075, 2 De G., M. & G. 383; "Trade Protection Society," *Caldicott* v. *Griffiths*, 8 Exch. 898. As to incomplete partnerships, see next chapter.

chant conducted in London, John Jones is at common law a partner of Robert Brown, on the ground that he participates in the profit of the business carried on by Robert Brown.

Active and dormant partners

It will be observed, that in the example put, John Jones in no way interferes with the business, and does not hold himself out to the world as a partner with Robert Brown, yet the common law invests him with that character even against his will, on the ground that he takes a portion of the fund upon which the creditors have a right to rely for payment (*a*).

(*a*) Smith's Mercantile Law, chap. 2; *Waugh* v. *Carver*, 1 Smith Lead. Ca. 838; *Pott* v. *Eyton*, 3 C. B. 32. As to the fine distinction between participation in the profits and the receipt of a sum proportional to the profits, see *ex parte Hamper*, 17 Ves. 403; *ex parte Hodgkinson*, 19 Ves. 291.

Agents and servants receiving by way of salary a portion of the profits, are not partners with their employers, though partners as respects third persons. *Ex parte Watson*, 19 Ves. Jun. 461; *Meyer* v. *Sharpe*, 5 Taunt. 74; *Stocker* v. *Brockelbank*, 3 M. & G. 250; *Reg.* v. *Wortley*, 15 Jur. 1137; 2 Den. C. C. R. 333: *ex parte Hickin*, 3 De G. & S. 662; *Pott* v. *Eyton*, 3 C. B. 32; *Andrews* v. *Pugh*, 24 L. J., Ch. 58; but see now *Cox* v. *Hickman*, 8 H. L. C. 268; *Reg.* v. *McDonald*, 7 Jur. N. S. 1127.

The principle of law that a receipt of the profits makes the recipient a partner towards third parties, whether he receives such profits in the character of principal or agent, would seem to have been firmly established prior to the case of *Cox* v. *Hickman*, 8 H. L. C. 268. This principle was recognized in its fullest extent by the Legislature in the Partnership Law Amendment Act, 28 & 29 Vict. c. 86, of which an abstract is given below, at page 25.

By that Act lenders of money to a trader, in consideration of receiving a portion of his profits, are, under certain conditions,

John Jones in such a case is called a dormant partner, to distinguish him from Robert Brown, the

exempted from the liabilities of partners. This amounts to little less than a statutory declaration that, as stated in the text, the lender of money is at common law a partner. The same statute provides that annuitants standing in a certain degree of relationship to a trader, and agents and servants under all circumstances shall not, by reason only of their receiving a portion of profits, be deemed in law to be partners. Here, again, the inference is irresistible that the Legislature considered that, at common law, agents and servants remunerated by, and annuitants receiving their annuities out of profits, were partners, at all events as against third parties.

In opposition to all these authorities stands the case of *Cox v. Hickman*, decided by the House of Lords. There two iron masters, B. and S. Smith, becoming embarrassed, by a deed, to which their creditors were parties, transferred their business to trustees on trust to carry it on under the name of the Stanton Iron Company, and to pay the net income which was declared to belong to the original owners, in liquidation of the claims of the creditors, and subject thereto, on trust to hold the property for the original owners. Under this state of circumstances, it was held that no partnership existed between the general creditors and the trustees, on the ground, as it would seem, that the trade was not really carried on by persons acting on behalf of the creditors, but on behalf of the sureties; and it was said that participation in profits was certainly cogent, often conclusive, evidence, that the trade in which the profits were made was being carried on in part for or on behalf of the person receiving such profit, but that such evidence might be rebutted; in short, the case seems to have decided that, in order to make a person a partner who is not so ostensibly, it must be shown that he stood in the relation of principal towards the persons acting ostensibly as partners.

An attempt was made to distinguish *Cox* v. *Hickman* from

active partner, who manages the business, and appears to the world to be solely interested.

The same consequences would follow, if, instead of a partnership of two persons, a company of 200 were formed; in other words, by the rules of the common law, no association can be formed for purposes of profit, without creating the relation of partnership between all its members (*a*).

the cases cited in support of the doctrine that participation in the profits constitutes the true criterion of partnership; but nothing was said in explanation of the cases in which agents, annuitants, and servants have been held liable as partners towards third parties—cases entirely irreconcilable with the doctrine enunciated in *Cox* v. *Hickman*, and recognized in the later cases of *English* v. *Irish Church Assurance Society*, 1 H. & M. 85; *Bullen* v. *Sharp*, L. R., 1 C. P. 86, and *Holme* v. *Hammond*, L. R., 7 Ex. 218.

A word in conclusion. Had the decision in *Cox* v. *Hickman* been given a hundred years ago, and been fairly acted on by the courts, the Partnership Law Amendment Act might have been spared, and partnerships with limited liability would long since have been as common in England as partnerships *en commandité* are in France. Coming when it did, that case disturbed the supposed settled principle of law that participation in profits involves the liabilities of partnership, and has made uncertain the degree of reliance to be placed on the Partnership Act itself, which, adopting the doctrine of the earlier decisions, has treated participation in profits as being of itself sufficient to create a partnership instead of dealing with it merely as a piece of evidence, from which a partnership might generally be inferred, in the absence of countervailing testimony. See *Holme* v. *Hammond*, L. R., 7 Ex. 218.

(*a*) *Burnes* v. *Pennell*, 2 H. L. C. 497. That there is no substantial difference between a partnership at common law and a

Ostensible partners

Another species of dormant partner, who for the sake of distinction may be called an ostensible partner, is a man who holds himself out to the world as a partner without having any actual interest in the profits.

For example, a retired member who allows his name to be used in the firm, still, as respects third persons, is subject to the liabilities of a partner, although he has withdrawn all his capital from the firm, and ceased to participate in its profits.

In this case, the law proceeds on the intelligible principle that if a person conduct himself so as to lead another to think he fills a particular character, it would be unjust if he were afterwards allowed to turn round and say that he does not fill it (*a*).

Unlimited liability of partners

The fact of the law creating the relationship of partners between the active parties and the passive or dormant partners, would be of comparatively little moment, if, in the case supposed, John Jones could have stipulated with Robert Brown that the latter

joint stock company at common law, except what results from the transferability of shares, see *Cape's Executors*, 2 De G., M. & G. 562; *Mayhew's Case*, 5 De G., M. & G. 837. As to winding up of companies established at common law, see the above cases and *Blakeley's Executors*, 13 Beav. 133, 3 M. & G. 726. As to winding up of *scrip* companies, or companies whose shares pass by delivery, see *Barclay's Case*, 26 Beav. 177; *Lund's Case*, 27 Beav. 465; *Aston's Case*, 4 De G. & J. 320; *Madrid and Valencia Co.*, 5 De G. & S. 276; *Hyam's Case*, 8 W. R. 52; 6 Jur. N. S. 181; *Grisewood and Smith, ex parte*, 4 De G. & J. 544.

(*a*) *Ness* v. *Angas*, 3 Exch. 805.

should not enter into any contracts without the consent of the former, or that, in the event of Robert Brown becoming bankrupt, John Jones should be liable only to the amount of the sum lent by him.

Any such condition, however, entered into between the partners, would be ineffectual, as a creditor has no notice of the terms of partnership, and looks only to the nature of the business carried on by the firm as a test by which to judge of the capacity of the firm to make contracts. He does not even ask for the concurrence of a majority of the partners in cases where they are numerous, as he relies on the second leading principle of partnership law, that each member of a *complete* (*a*) partnership is the agent of the rest, and binds his co-partners in all matters within the scope of the ordinary business of the partnership (*b*).

(*a*) *Ernest* v. *Nichols*, 6 H. L. C. 401, *per* Lord Wensleydale. The introduction of the term "complete" is material, "as the want of due attention to this rule in applying it to conditional partnership, and to other associations, such as that of provisional committees, has been productive of frightful loss of property in our own time, until corrected by the decisions of the courts below and of this house; *ibid*, p. 418. See next chapter.

(*b*) Examples of acts not within the scope of the partnership business are the following: "the execution of a deed," *Harrison* v. *Jackson*, 7 T. R. 207; "undertaking by an attorney to pay debts and costs for client," *Hasleham* v. *Young*, 5 Q. B. 833; "guarantee by railway contractors," *Brettel* v. *Williams*, 4 Exch. 623; "money borrowed to increase capital of firm," *Fisher* v. *Taylor*, 2 Hare, 218; "money borrowed by co-adventurer in mine," *Ricketts* v. *Barnett*, 4 C. B. 686; "promissory note by an attorney," *Hedley* v. *Bainbridge*, 3 Q. B. 316; *Ricketts* v. *Barnett*, 4 C. B. 686.

Adopting then the same names as before, if Robert Brown had agreed with James Smith to purchase goods to the amount of 10,000*l.*, the agreement would bind John Jones, unless previously to its being made he had given James Smith notice of the restriction that he had placed on Robert Brown; nay, more, Robert Brown might borrow 10,000*l.* on promissory notes, and spend it in payment of his private debts, and yet John Jones would be bound, if the notes were made in the name or style of the partnership.

Rule of unlimited liability extends to joint stock companies.

The combined effect, therefore, of the above rules of partnership is to expose every shareholder in a trading association to the evils of unlimited liability.

Contribution between partners.

It must not, however, be imagined that a partner can violate the regulations of the partnership with impunity. Another rule of the law here steps in and declares that the right of one partner to be indemnified by another is co-extensive with the right of one partner to bind another. So long, therefore, as a partner contracts for the purpose of and in accordance with the regulations of the partnership, he is entitled to require from the other partners a rateable contribution towards payment of the debts contracted. On the other hand, if he exceed the authority vested in him by the terms of his partnership, his co-partners may compel him, as between themselves, to bear the whole burden of such excess, and to repay them any moneys they may have been obliged to pay by reason of his misconduct.

Example in illustration

Recurring to the foregoing example, Robert Brown

having borrowed 10,000*l.*, which the terms of the partnership did not authorize him to borrow, must make good any moneys that John Jones may have paid on account of the promissory notes. A different result would have ensued if Robert Brown and John Jones had been traders together as merchants, and the produce of the promissory notes had been expended for the purposes of the partnership. In that event John Jones must have contributed his due proportion of the 10,000*l.*

of the right of contribution between partners.

It will readily appear, from the foregoing observations, how complex a thing a partnership is in contemplation of law: presenting a very different aspect, nay more, in many cases presenting a different body of persons, according as it is viewed in relation to third parties, or in relation to its own members. In the latter case, it constitutes a firm or society bound together by internal regulations which all the members must obey; in the former it consists of a number of individuals, upon whom the law, drawing certain conclusions from their mode of dealing with third parties, imposes the liabilities of partners in their individual capacities, whilst it refuses altogether to acknowledge them as a firm or as acting in a collective capacity.

Difference in constitution of partnership when viewed in relation to its own members and in relation to third parties.

Take for example the firm of Brown & Co. Mr. Brown has long ago retired, and has no interest in the business and no capital invested in it, but allows his name to continue in the partnership for the benefit of the active partners. Mr. Smith has also retired from the active duties of the firm, but allows his capital to remain in the business, and receives as compensation

Example illustrative of foregoing difference.

one-half of the profits. The real actors in the business are the three sons of Mr. Smith. They make the contracts, they write to the creditors, in fact they conduct the whole business precisely in the same manner as if they alone constituted the partnership, with this exception that they continue to use the old name of Brown & Co., and pay annually one-half of the profits to Mr. Smith. Now, observe what happens: if the firm get into difficulties, and its affairs be wound up, the creditor cares nothing for the internal arrangement of the partnership. He enforces, if he please, the whole of his debt against the retired partners, Mr. Brown and Mr. Smith; leaving them, as they best may, to obtain compensation from the firm.

Application of principles to Joint Stock Companies.

Assume for a moment that instead of the partnership of Brown & Co., a Joint Stock Company of 1000 persons is formed: a board of some twenty or more directors represents the three Smiths, the active partners; the general body of shareholders represents John Smith, the dormant partner; and counterparts may readily be found for John Brown, the ostensible partner, in shareholders who, having transferred their shares, have neglected to cause the transfer to be registered, and therefore appear to the world as shareholders. The same legal consequences follow in the case of this vast company as in the case of the simple partnership of Brown & Co. The directors have the same power of pledging the credit of the 980 shareholders that the three active partners had of pledging the credit of John Brown and John Smith, and the

creditor may at his option sue, for all the debts of the company, any one or more of the shareholders, including the unfortunate transferors, who have parted with their whole interest, but have forgotten to have the transfer of their shares completed (*a*).

Difficulties arising from application of law of partnership to Joint Stock Companies.

The principle having been thus established that Joint Stock Companies are mere partnerships in the eye of the common law, it might have been supposed that the law would have been active in devising remedies for any inconveniences that might arise from applying to associations consisting of numerous shareholders rules of procedure framed only for the adjustment of the rights of a few partners as between themselves, or for ascertaining, in case of litigation, their claims or their liabilities in relation to third parties.

A few examples of the rules of procedure, applied to Joint Stock Companies, will show how far these expectations were from being realized, and will lead the way to the consideration of the numerous statutes that have been passed for the purpose of removing the difficulties created by the shortcomings of the courts of law.

Calls incapable of being enforced at law.

To begin with the means of enforcing calls. It is a rule of law that no action can be brought by one partner against another for money due in respect of any partnership transaction, on the ground that a court of law cannot in such case do complete justice, since the

(*a*) These observations apply only to a Joint Stock Company at common law, and not to a company formed under the Joint Stock Companies Acts, in which, as will be seen hereafter, the creditor is held to have notice of the regulations of the company. See p. 101.

forms of action will not permit it to enter on such an investigation of the entire state of the partnership accounts, as is necessary to ascertain the real and fair claims of the contracting parties (*a*).

Such being the rule, a call could not be enforced by action: for if brought in the name of the directors it failed, as being an action brought by one partner against another, whilst if brought in the name of the firm, it was equally unsuccessful, as the law ignored altogether the existence of such a body.

A similar incapacity to enforce calls in equity.

Little aid in this difficulty was afforded by recourse to a court of equity; for the taking of general account being a necessary preliminary to compel a partner to pay money at the suit of other partners, it followed that even if a court of equity would entertain a bill for an account, it would be practically impossible to expose the whole affairs of the company to a judicial investigation, in order to enforce contribution from two or three shareholders.

Difficulties as to adjustment of rights of shareholders among themselves.

Secondly, with respect to the adjustment of the rights of the shareholders among themselves. The settlement of partnership disputes is the peculiar province of courts of equity. Those courts, however, regarded Joint Stock Companies with no less disfavour than courts of law. They required all the partners to be parties to a suit for dissolution, and at the same time were unwilling to take partnership accounts, or to interfere in partnership matters, unless a dissolution were the object of the suit (*b*).

(*a*) Smith's Mercantile Law, 6th ed. p. 35.

(*b*) *Deeks* v. *Stanhope*, 14 Sim. 57; *Harvey* v. *Bignold*, 8

Case of *Van Sandau* v. *Moore*. 1 Russ. 441.

A striking example of the injustice resulting from these rules of equitable procedure was afforded in the case of *Van Sandau* v. *Moore*. In that case a shareholder in the British Annuity Company, complaining that the deed of settlement contained provisions inconsistent with the prospectus on the faith of which he had accepted shares, filed a bill against the directors and other shareholders, to have the company dissolved, and the proper accounts taken. Fourteen of the directors appeared, and filed fourteen separate answers, with long schedules to each, and the court held that the defendants could not be compelled to answer jointly, and that there was no reason in fact why the whole three hundred shareholders might not answer separately. The result was, that it became impossible to proceed with a suit in which the plaintiff, as a preliminary measure, might have had to pay for copies of three hundred answers, each with a long schedule.

The effect of this case obviously was to render it impossible for individual shareholders to obtain a dissolution of the partnership, or an adjustment of the claims subsisting between themselves and their copartners.

Difficulties in relations of companie to third parties.

Similar difficulties occurred in the relations between Joint Stock Companies and third parties. The law held that an action by or against a company was

Beav. 343; *Evans* v. *Stokes*, 1 Keen 24; *Richardson* v. *Hastings*, 7 Beav. 301; *Abraham* v. *Hannay*, 13 Sim. 581; *Long* v. *Yonge*, 2 Sim. 369; *Wilson* v. *Chester*, 1 L. J. (N. S.) 126; *Walworth* v. *Holt*, 4 Mylne & Craig, 619.

defective, unless all the partners were before the court as plaintiffs or defendants. An action, therefore, by a company consisting of numerous partners became an impossibility. In the case of an action *against* a company, the difficulty was practically obviated by the rule, that the omission of the name of one or more defendants could only be taken advantage of as a means of delay by a dilatory plea, and in such plea the defendant was required to state who ought to be joined with him, and to give the addresses of the persons named.

Legislative remedies for foregoing difficulties.

Such being the state of the law, applications were continually made to parliament by companies for Acts enabling them to sue and be sued in the name of their public officer without absolving their members from general responsibility (*a*).

Joint Stock Companies Act, 1844.

In 1844 the first Joint Stock Companies Act (7 & 8 Vict. c. 110) was passed, but was repealed except as respects insurance companies, by the Act of 1856, and as respects these companies by the Companies Act 1862.

The Act of 1844 did not extend to banking com-

(*a*) Assuming any of the privileges of a corporation, *e.g.* having shares transferable without the consent of all the partners, was at one time held to be illegal; *Duvergier* v. *Fellows*, 5 Bingham 248; *Blundell* v. *Winsor*, 8 Sim. 601; *Harvey* v. *Collett*, 15 Sim. 332; but those cases may be considered as overruled by *Harrison* v. *Heathorn*, 6 Man. & Gr. 81; *Aston's Case*, 4 De G. & J. 320, *ex parte Griscwood*, 4 De G. & J. 544. As to suit by public officer against members of the company, see *Harrison* v. *Brown*, 5 De G. & Sm. 728.

panies, but in the same year a special Act was passed for the regulation of banking companies in England (7 & 8 Vict. c. 113), which in 1846 was extended to Scotland and Ireland by the Act 9 & 10 Vict. c. 75.

The above Acts dealt only with a portion of the existing evils. They enabled companies to compel payment of calls by their shareholders and payment of debts by their debtors, but they retained the partnership relation between the shareholders, and provided no means for the dissolution of a company or for the satisfactory adjustment of disputes between the shareholders.

Winding up of 1848 49.

A further step was gained in the years 1848–49, by the passing of the Winding-up Acts. Still, the old fallacy of the partnership liability towards third parties was left untouched, and a winding-up under the Acts of 1848–49 amounted merely to a proceeding on behalf of shareholders to equalise their contributions for payment of debts, and not to a suit on behalf of creditors for compelling payment of their debts from an insolvent company.

It is true that this defect was to some extent remedied by the Act of 20 & 21 Vict. c. 78. Still, a winding-up under the Acts of 1848 and 1849 could not be instituted by a creditor, and wore the aspect of a proceeding on behalf of the shareholders, rather than that of a distribution, on behalf of creditors, of the assets of an insolvent company (*a*).

(*a*) In addition to the above Acts, it may be well to mention

The above-mentioned Acts made no provisions authorising companies to acquire limited liability, and shareholders still remained liable to the full extent of their means for the debts of the company.

Limited Liability.

At length, limited liability was made attainable by joint stock companies by the passing of the Limited Liability Act of 1855.

That Act was brought forward late in the session, not as an independent measure, but as a graft on the Joint Stock Companies Act 1844.

Every company desirous of obtaining limited liability was compelled to comply, not only with the provisions of the Act of 1855, but also with those of the Joint Stock Companies Act of 1844, so that limited liability, though certainly made attainable, was attainable only at great expense, and subject to great technical difficulties.

Joint Stock Companies Act 1856.

This brings down the history to 1856, in which year Mr. Lowe, as Vice-President of the Board of Trade, brought into the House of Commons the Joint Stock Companies Act 1856, for the purpose of reducing into a practical system the disjointed provisions of the preceding Acts, and of giving due prominence to the indications afforded by the legislature of an inclination to free companies from the impediments

the Act of 7 & 8 Vict. c. 111, a scheme for creating and dealing with corporate bankruptcy, but which failed from a want of provisions for apportioning contributions among the co-partners and was supplanted by the Winding-up Acts of 1848 and 1849; also 9 & 10 Vict. c. 28, commonly called Lord Dalhousie's Act, to facilitate the dissolution of certain railway companies.

that had been placed in their way, and to confer on capitalists the benefit of unrestricted powers of combination.

This Act has since been repealed by the Companies Act 1862; but as all the subsequent legislation on the subject is merely an extension of its principles, it will be expedient to consider them somewhat in detail.

Remedies provided by Act of 1856.

The first object of the Act was to incorporate all companies formed under its provisions, or, in other words, to consider the company as an individual having a distinctive name, and capable of suing and being sued, and of contracting in such name. As soon as a company is endowed with these capacities, all the evils that have been pointed out disappear. The contracts being entered into by the company in its corporate character, the individual members of the company are not bound by them; the members of the company have a distinct existence from the company itself, and actions may be brought by the company against individual members, and by individual members against the company. Moreover, contracts between the company and third parties can be enforced with the same facility and by the same methods as contracts between individuals.

Secondly, the Act relieved companies from the oppressive procedure of courts of equity, by providing a complete system for the dissolution of companies, the payment of their debts, and the adjustment of the rights of the shareholders among themselves, either through the medium of a court, or by the voluntary

action of the company itself, thus sweeping away at once all technical obstacles to the adminstration of justice in the case of companies that may be unable or unwilling to carry on their business.

The same principles were applied to unlimited as well as limited companies. The only difference is in the extent of liability. In limited companies the creditor can only look to the shareholders for unpaid calls, and beyond this can require nothing at their hands; while in an unlimited company he may treat the aggregate capital of the individuals composing the company as a reserved fund, in the nature of a guarantee for the solvency of the company, and may, by means of a winding-up suit, indemnify himself out of that fund in the event of the corporate assets being insufficient.

Liquidators.

Whether the company is wound up by the Court or voluntarily, officers called liquidators are appointed, whose duty it is to collect the property of the company, make calls upon the shareholders to the extent of their liability, and do all other acts necessary for a due realization and distribution of the assets.

If the winding up is voluntary, the liquidators are nominees of the company, and act on their own discretion; if compulsory, the liquidators are appointed by the Court, are officers of the Court, and are subject to its control throughout the whole of the winding up.

Remarks on compulsory and voluntary winding up.

The systems of compulsory winding up and voluntary winding up cannot possibly clash with one another, as it is provided that the voluntary winding

up of a company is not to prejudice the right of any creditor to institute a suit for a winding up by the Court.

The two systems of winding up above mentioned were, in a sense, sufficient to provide for the winding up and dissolution of all companies registered under the Act.

The Court was invested with ample jurisdiction to wind up insolvent companies, while it was open to companies which were able to pay their debts, or to make arrangements with their creditors, to avail themselves of the provisions relating to voluntary winding up.

The objection to a winding up by the Court is, of course, expense.

The liquidators have to refer to the Court on every occasion; the moneys received from the contributories must be paid into the Bank of England; and no transaction is completed without an expenditure of considerable fees.

Third system of winding up, partly compulsory, partly voluntary.

Such being the case, it occurred to the framers of the Act of 1856 that it might be possible to make a hybrid system of winding up, partly compulsory and partly voluntary, which would avoid the expense of the constant interference of the Court, without depriving either the creditor or contributory of a ready access to the Court in cases where its interference was really required.

In other words, it occurred to them to separate the contentious from the non-contentious business, by investing, in the first instance, the liquidators in a

voluntary winding up, with the powers of the Court, and giving to any creditor or contributory an appeal to the Court from the decision of the liquidators in every case where such decision was deemed to be unjust.

It seemed that such a process would have the effect of winnowing the points really disputed from those admitting of no controversy, and thus of saving the assets of the company from being expended in litigation of immaterial points.

20 21 Vict. c. 14, s. 19, created system.

In accordance with these views, Mr. Lowe introduced a provision into the Joint Stock Companies Act of 1857, enacting that when a company was in the course of being wound up voluntarily, and proceedings were taken for the purpose of having the same wound up by the Court, the Court might, instead of making an order that the company should be wound up altogether by the Court, direct that the voluntary winding up should continue, but subject to such supervision of the Court, and with such liberty for creditors, contributories, or others, to apply to the Court, and generally upon such terms, as the Court should think fit.

System extended by 21 & 22 Vict. c. 60.

The system thus introduced was immediately caught at both by creditors and contributories of joint stock companies, and in the following year, 1858, the Joint Stock Companies Amendment Act was passed, having for its sole object the expansion of the system of winding up, initiated by the Act of 1857, and called a winding up subject to the supervision of the Court.

Banking Acts of 1857

Two other Acts require to be noticed, the one passed

in 1857, and the other in 1858, intituled respectively, "The Joint Stock Banking Companies Act, 1857," and "An Act to enable Joint Stock Banking Companies to be formed on the Principle of Limited Liability." and 1858. 20 & 21 Vict. c. 49; 21 & 22 Vict. c. 91.

The titles explain the objects of these Acts. The first was passed for the purpose of enabling banking companies to register with unlimited liability under the Act of 1856; the second placed banking companies on a footing with other companies, by enabling them to register under the Acts of 1856 and 1857, with limited as well as unlimited liability.

A distinction, however, of considerable importance was made between banking and other companies, by the enactment, that every banking company formed under the new Act should have shares of not less amount than 100*l.* each. But this provision, which was extremely inexpedient, has been repealed by the Act of 1862.

The necessity of consolidating so many Acts relating to the same subject matter, led to the passing of the Act of 1862, which repeals the former Acts, and fills up certain gaps left open by the preceding legislation (*a*). Act of 1862, 25 & 26 Vict. c. 89.

First with respect to the class of companies comprehended in the former Acts.

No company could be registered under the Acts of

(*a*) The Act was brought in twice (in 1859 by Lord Chelmsford, and again in 1860 by Lord Campbell), but did not pass till 1862.

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1856 and 1857, unless it possessed a joint-stock capital divided into shares of a certain fixed amount.

Exclusion of certain companies in former Acts

All companies, therefore, formed on the mutual principle, such as mutual building companies, mutual loan companies, and other like companies, and all associations deriving their funds from annual subscriptions, or any other source than a share capital, were entirely excluded.

Insurance companies, moreover, were expressly prohibited from availing themselves of the provisions of the Acts of 1856, 1857.

This prohibition extended to insurance companies, whether formed on the principle of a joint-stock company or of a mutual company. The exclusion of the former class of insurance companies did not result from any difficulty in including them with other joint-stock companies, but was admitted in deference to an opinion given by a Select Committee of the House of Commons, "that the business of insurance companies differs so much from that of ordinary companies, that it will be advisable to repeal all the provisions of the Joint Stock Companies Act of 1844, and to deal with them in a separate Act."

The reasons stated in that resolution do not apply to the Act of 1862. It abrogates the Act of 1844 altogether, and there seems no ground for dealing with insurance companies in a manner differing in principle from that in which the legislature deals with other companies.

Extension

The convenience which would result from having a

uniform system of law, applicable to companies of every description, led to an inquiry whether it would not be possible to construct an Act in such a manner as to extend the provisions of limited, as well as unlimited liability to every company that might choose to avail itself of the provisions of such an Act.

of Act to all companies.

With respect to unlimited companies, no difficulty occurs.

No difficulty with unlimited companies.

In the event of insolvency, every member is liable in the same degree to the creditor, whatever may be his interest in the company.

The creditor, therefore, is in no way concerned in the internal organisation of the company, and the same system for winding up adapts itself with facility to an unlimited company, whether formed as a joint-stock company, or on any other principle.

In the case of limited companies, greater difficulty exists

Difficulty with limited companies.

Some measure must be found for the limit of liability, and in a company having a capital divided into shares this is attained by declaring that no shareholder shall be liable beyond the amount of calls unpaid on the shares held by him.

By altering the measure of liability, it would seem that the privilege of limited liability might be extended to companies in general, however organised, without infringing any principle which led the legislature to sanction the adoption by companies of limited liability.

Accordingly in the Act of 1862 two modes of forming limited liability companies are proposed: the first

Mode of extending limited lia-

bility to all companies.

follows the model of the Act of 1856, and limits the liability of the members to the calls unpaid on their shares: the second limits the liability of the members to such amount as the members may undertake by the memorandum of association of the company, to contribute to the assets of the company in the event of its being wound up.

Company limited by shares and company limited by guarantee.

Of these companies the first is called "a company limited by shares," and is identical with the limited company of the Act of 1856; the second is called "a company limited by guarantee," and from its greater flexibility of form, admits of any possible internal organisation that can be devised for a company.

The security of the creditor is equally provided for in each class of company.

In a company limited by shares, the creditor looks to the value of the shares, and to the amount of unpaid calls. If the calls are paid up, the obligation of the shareholders has ceased, and the creditor can rely only on the actual property possessed by the company.

In a company limited by guarantee, the creditor will have a right against any member of the company to the extent of his engagement as defined by the memorandum of the association, whatever may be the nature of the company, whether joint stock or otherwise. If the engagement bind the members to pay a very small amount, the company will of course fail in getting credit; on the other hand, if the engagement be to pay a considerable amount, and the members of the company be reputed men of substance, the

creditor will have a more certain security to rely on than he can possibly have in the best conducted company limited by shares.

Winding up of unregistered companies.

A further addition to the Act of 1856 is made by the 8th Part of the Act of 1862, which substitutes for the Winding-up Acts of 1848–49 the system of winding up by the Court initiated by the Act of 1856, and applies it to all partnerships, associations, or companies consisting of more than seven members, although they are neither registered nor incorporated under the Act of 1862. With the exceptions that have been mentioned, there is no material difference between the enactments of the Act of 1862 and those of the Acts of 1856–57–58 above referred to; and it is unnecessary here to go further into the details of that Act, as the mode in which companies are formed, regulated, and wound up under its provisions forms the subject-matter of the following pages.

Nor is it necessary here to do more than mention the Companies Act, 1867 (*a*), which amends in several respects the Act of 1862.

Partnership Law Amendment Act, 28 & 29 Vict c. 86.

This chapter would, however, be incomplete if further mention were not made of the Act to amend the Law of Partnership, 28 & 29 Vict. c. 86. The effect of that Act is to declare that participation in the profits of a trader shall not of itself make the recipients of such profits partners with the trader.

The first section addresses itself to lenders of money,

(*a*) 30 & 31 Vict. c. 131: for observations on Act, see Part II. chapter 8.

and provides that the advance of money by way of loan to a trader on condition of receiving a rate of interest varying with the profits, or a share of the profits, shall not of itself constitute the lender a partner with the trader, or render him responsible as such. The benefit of this privilege, however, is considerably narrowed by the fifth section, which enacts that in the event of the trader being adjudged bankrupt or compounding with his creditors, the lender is not to recover any portion of his principal or interest till the other creditors have been satisfied.

To secure the benefit of the Act, the contract for the loan must be in writing.

By the second section, agents and servants may be remunerated by a share of the profits without incurring the liabilities of partners.

The third section provides that an annuity may be granted out of profits to the widow or child of a deceased trader without exposing them to the liabilities of partnership. Similarly, under section four, a person selling the goodwill of his business on condition of receiving an annuity or other portion of the profits of the business in consideration of the sale made by him, is not to be deemed a partner, or be subject to the liabilities of the person carrying on the business (*a*).

A Bill, having the same object in view as the last-mentioned Act, was brought into the House of Commons by Mr. Lowe, in 1856, with a view to place

(*a*) The Act itself will be found in App. III.

private firms on a par, so far as was possible, with joint-stock companies, by enabling them to offer capitalists the same inducements of sharing in profits of trade that were held out by the trading companies. The Bill, however, was abandoned in consequence of a motion being carried that loans made to traders in pursuance of its provisions should be gazetted, as it was thought better to give up the measure altogether than to pass it with a restriction which would prevent its being of any substantial benefit to the mercantile community (*a*).

The rights and obligations of members of inchoate companies will form the subject of the next chapter.

(*a*) As to construction of this Act, and the effect of the case of *Cox* v. *Hickman*, 8 H. L C. 268, see above, page 3.

CHAPTER II.

INCHOATE COMPANIES.

Prospectus.

THE first step usually taken in the formation of a company is the publication of a prospectus (*a*). This document is prepared by the promoters of the company, and it is on the faith of its representations that the public accept shares (*b*).

Form of prospectus.

Its form is so familiar as hardly to require notice. It begins by announcing the capital of the company, and its distribution into shares. Then follows an array of persons who form the provisional committee. To these succeed the names of the bankers, solicitors, and secretary of the company. A description of the undertaking, and an assurance of the certainty of its success fill up half a dozen more paragraphs; and the document concludes by a form of application for shares, addressed to the directors of the company, in which the signatary requests to have allotted to him a certain number of shares in the company, and undertakes to pay a deposit thereon, and sometimes to sign

(*a*) Under the Act of 1862, incorporation is so readily attained that the prospectus is not usually issued before the company is incorporated. Thus, there is no provisional committee, but a list of directors is inserted, and the difficulties as to liability for preliminary expenses below referred to (p. 31) do not arise.

(*b*) Observations on nature and office of prospectus; *Peek* v. *Gurney*, L. R., 6 H. L. 377.

a subscription contract, subscriber's agreement, articles of association, or other document, when required by the provisional committee or the directors.

Promoters liable for misrepresentation in prospectus.

The prospectus is generally considered by the promoters as a document in which they are at liberty to put forward in high relief all the advantages of the company, and to throw into the background all its difficulties. Such a practice is most dangerous. A certain amount of colouring as to prospective advantages may no doubt be safely indulged in; but misstatement or concealment of any material fact will not be permitted, and a promoter is liable to make good to allottees the damage they have sustained by taking shares on the credit of what afterwards proves to be a misrepresentation on his part.

Gerhard v. Bates.

For example, the promoters of a company called the Iberian Silver Lead Ore Company, declared by their prospectus, that they did not hesitate to guarantee to the bearers of 1,200 shares, mentioned in the prospectus, a minimum annual dividend of 33*l.* per cent.

Mr. Gerhard took shares on the faith of this prospectus, and finding, as might have been expected, that the guarantee was not fulfilled, brought an action against one of the promoters, for recovery of damages in respect of the loss incurred by him through the false representation in the prospectus.

The court held that the plaintiff was entitled to recover, observing, that they considered it to be clear law, that if A. fraudulently make a representation, which is false, and which he knows to be false, to B.,

meaning that B. shall act upon it, and B. believing it to be true, does act upon it, and thereby suffers a damage, B. may maintain an action on the case against A. for the deceit. (*a*)

Proceedings consequent on issue of prospectus.

As soon as the prospectus is issued, the company is supposed to be established. A meeting of the provisional committee is held, at which a managing committee is appointed, and resolutions are passed, giving authority to the managing committee to allot shares, and to apply the deposits received on such allotment, in payment of the expenses incurred in the formation of the company in the preparation of plans or in otherwise advancing the objects of the company. (*b*)

Scrip certificate.

The allotment of shares is usually effected by a letter of allotment informing the applicant for shares that the managing committee have allotted so many shares to him. In many companies, on receipt of the deposit, a certificate called a scrip certificate is issued, declaring that the bearer is entitled to a certain number of shares in the company. (*c*)

(*a*) *Gerhard* v. *Bates*, 2 Ell. & Bl. 476; *Barnard* v. *Bayshaw*, 1 H. & M. 69; *Bale* v. *Cleland*, 4 F. & F. 117; *Collingwood* v. *Berkeley*, 15 C. B., N. S. 145, and see cases cited in note (*a*), p. 68.

(*b*) As to the risk incurred by the promoters in thus applying the deposits, see page 34.

(*c*) A usual form of scrip certificate is as follows:—

No.	No. *Scrip Certificate.*
One Share of £20. Deposit, £1.	THE WEST CHARLTON BANKING COMPANY. The holder of this Certificate having paid the deposit of £1 is entitled to one share of £20 in the above-mentioned company.

At this stage of the proceedings speculation usually begins; the scrip is treated as a marketable security; it is often sold at a price considerably larger than the amount of the deposit paid by the original allottee, and passes from hand to hand, carrying with it the right of claiming the specified amount of shares in the proposed company.

Successful incorporation of company.

First, let us suppose the company to become incorporated with undiminished popularity. Little difficulty ensues; the holders of scrip certificates greedily exchange them for shares; the company becomes invested with the rights and subject to the liabilities of a corporation; and the expenses incurred by the promoters are paid out of the first moneys received by the company.

Failure of company to obtain incorporation.

Next, take the reverse of the picture. Circumstances are adverse; the company fails in arriving at incorporation; considerable debts have been incurred in making surveys, printing prospectuses, and otherwise getting up the company; and the question arises, by whom such expenses are to be borne.

Liability for debts incurred. *Hutton* v. *Thompson.*

At first it was supposed, that all the persons interested in the proposed company, original allottees, provisional committee, and managing committee, were partners, and therefore, according to the usual law of partnership, were liable for the debts contracted by the managing committee.

The question of the liability of original allottees was set at rest by the cases of *Hutton* v. *Thompson*, and *Norris* v. *Cooper* (*a*), in the House of Lords. In the

(*a*) 3 H L. C. 161.

first of these cases, Mr. Thompson applied for twenty shares in a projected undertaking, and paid the deposit thereon. The undertaking was abandoned after considerable expense had been incurred, and an endeavour was made to make Mr. Thompson a contributory under the winding-up acts. The House of Lords, however, decided, that as the respondent was not liable to an action at law at the suit of any creditor of the company, so he was not liable to any portion of the expenses of an undertaking which had failed.

It having thus become settled law, that acceptance of shares in an inchoate company did not render the acceptor liable to pay the preliminary expenses; the next effort made was to fix all the members of the provisional committee, whether they acted or not, with a partnership liability. Here, however, the House of Lords again interposed, and decided in favour of the opinion of the judges, that no partnership existed between persons associated together in an unsuccessful attempt to form a company. In the leading case (*a*) on this question, Baron Parke, in delivering the opinion of the judges, explained the relation, or rather the want of any relation between the members of incomplete undertakings, as follows:

Bright v. Hutton.

"In the case of provisional committees, or the projectors of a company, it is now perfectly well settled law, and acted upon in every court of law in Westminster Hall, that there is no partnership between

(*a*) *Bright* v. *Hutton*, *Hutton* v. *Bright*, 3 H. L. C. 341, in effect overruling *Hutton* v. *Upfill*, 2 H. L. C. 674. See the cases in the next note.

them, no common power of binding each other merely by such a relation; each binds himself by his own acts only. There are therefore very few creditors of such a body collectively, though many of one, two, three or more acting individuals, who compose the committee or are projectors; and so there may be a series of contracts, to which there are different contributories, according as they have been authorised by different persons, very few binding all, and those only upon the rare accident of each individual authorising that particular contract." (*a*)

Result of cases.

The result, therefore, was that the creditor found he was deceived in thinking that the law would invest the members of inchoate companies with the liability of partners. The only persons against whom he had a remedy were the managing committee, and not even against them as a body, but only in their individual characters, in respect of the particular engagements which each had contracted. (*b*)

(*a*) *Bright* v. *Hutton*, at p. 368. See *Reynell* v. *Lewis*. *Wyld* v. *Hopkins*, 15 M. & W. 517; *Besley, ex parte*, 3 M. & G. 287. Promoters of an abortive company are not partners, even though they have bought property for the purposes of the company. *Hamilton* v. *Smith*, 5 Jur. N. S. 32. Promoters held liable, *Maddick* v. *Marshall*, 10 Jur. N. S. 1201. *Riley* v. *Packington*, L. R., 2 C. P. 536. No authority under circumstances to secretary to pledge credit of promoter, *Burbidge* v. *Morris*, 34 L. J. Exch. 131. Contribution between promoters, *Boulter* v. *Peplow*, 9 C. B. 493. *Batard* v. *Hawes*, 2 E. & B. 287.

(*b*) As to what is called a scrip company, in which the scrip is in effect shares, see *Barclay's case*, 26 Beav. 177. *Ex parte Finlay*, 26 Beav. 182; *Lund's case*, 27 Beav. 465.

Return of deposit. *Walstab v. Spottiswoode.*

The law, however, was not contented with simply relieving subscribers to inchoate undertakings from liability; it went on to decide that, in the absence of a contract, the managing committee have no right to expend, in payment of the preliminary expenses, any portion of the deposits they receive; but must return to each subscriber the amount of his deposit without any deduction.

Mrs. Walstab accepted an allotment of thirty shares in a company proposed to be formed for making a railway, and paid by way of deposit, 78*l.* 15*s.* The scheme afterwards failed, without any fault of the provisional directors, and Mrs. Walstab recovered the whole of her deposit, without any deduction for the expenses necessarily incurred in getting up the company. (*a*)

The above difficulty as to payment of expenses suggests the importance, in every case, of compelling subscribers before receiving their scrip to sign an agreement (*b*) expressly authorising the provisional directors to pay the preliminary expenses out of de-

(*a*) *Walstab* v. *Spottiswoode*, 15 M. & W. 501; *Nockels* v. *Crosby*, 3 B. & Cr. 814; *Pitchford* v. *Davis*, 5 M. & W. 2; *Tredwen* v. *Bourne*, 6 M. & W. 461; *Chaplin* v. *Clark*, 4 Exch. 403; *Wontner* v. *Shairp*, 4 C. B. 404; 4 Rail. Ca. 542; *Watts* v. *Salter*, 10 C. B. 477; *Jarrett* v. *Kennedy*, 6 C. B. 319; *Ashpitel* v. *Sercombe*, 5 Exch. 147. So in case of cost-book company, *Johnson* v. *Goslett*. 3 C. B., N. S. 569.

(*b*) As to subscriber's agreement, *Garwood* v. *Ede*, 1 Ex. 264; 5 Rail. Ca. 134; *Aldham* v. *Brown*, 7 Ell. & Bl. 164; *Carew's case*, 7 De G. M. & G. 43. See cases cited page 37, note (*c*).

posits; or else, of framing the letter of application for shares and letter of allotment, in such a form as to make them operate together as an agreement to the above effect. (*a*)

Liabilities of allottees and scripholders on incorporation of company

If the company fail in attaining incorporation, it has been shown that there is no use in discriminating accurately between the relative obligations and rights of the original allottees and the scripholders; for neither the one nor the other comes within the grasp of the law.

Scarcely more difficulty arises if the company become incorporated, provided that the scheme continue to retain its hold on public favour. In such an event, the holder of the scrip has a right to be registered; and if from any delay on his part the original allottee is placed on the register, he will be considered in the light of a trustee of his shares for the scripholder. (*b*)

Suppose, however, the shares to be at a discount at the time of the incorporation of the company, a very different state of things ensues. The company is desirous of filling up its share list; the original allottee is anxious to fix on the person, to whom he has sold his scrip, the liability to be registered; whilst the scripholder is willing to lose the money he has paid for the scrip, if he can but abandon the scrip at the same time.

(*a*) *Jones* v. *Harrison*, 2 Exch. 52. *Clements* v. *Todd*, 1 Exch. 268 See note supra, p. 28.

(*b*) *Beckitt* v. *Billborough*, 8 Hare, 188; see also *Columbine* v. *Chichester*, 2 Phil. 27; *Bagshaw* v. *Eastern Union Railway*, 2 M & G. 389.

The law is still somewhat unsettled with respect to the rights of the parties in the supposed case, but the following points appear to be decided:—First, the company have a right to register the original allottee in all cases where a binding engagement to accept shares can be shown to exist; and the allottee cannot repudiate such engagement *as against the company* on the ground that he has sold his scrip, and thereby transferred his obligations to the scrip-holder. (*a*)

The only mode in which a person, who has so engaged to take shares, can relieve himself from liability, is to procure another person to be registered in his place, with the consent of the company, or else to get his own name placed on the register, and transfer his shares in accordance with the regulations of the company. (*b*)

(*a*) *Midland Great Western Ry. Co.* (*Ireland*) v. *Gordon*, 16 M. & W. 804; *Brownlow* v. *Nixon*, 2 H. & N. 455. In these cases a subscriber's agreement had been signed; compare *Littlehampton Steamship Co.*, 2 D. G. J. & S. 521; *Ormerod's case*, 5 Eq. 110; *Eustace* v. *Dublin Trunk Ry. Co.*, 6 Eq. 182, and *McIlraith* v. the same, 7 Ch. 134.

(*b*) As to register and registration under Companies Clauses Consolidation Act 1845, *Midland Great Western Ry. Co.* (*Ireland*) v. *Gordon*, ubi supra; *Newry and Enniskillen Ry. Co.* v. *Edmunds*, 2 Exch. 118; *Ex parte Neilson*, 3 De G. M. & G. 556; *E. Gloucestershire Ry. Co.* v. *Bartholomew*, L. R., 3 Ex. 15; *McEuen* v. *W. London Wharves Co.*, 6 Ch. 655; *Burke* v. *Lechmere*, L. R., 6 Q. B. 297; but see *Sheffield and Manchester Ry. Co.* v. *Woodcock*, 7 M. & W. 574; *Wolverhampton New Waterworks Co.* v. *Hawkesford*, 6 C. B., N. S. 336, 7 ib. 795, and 11 ib. 546; *Irish Peat Co.* v. *Phillips*, 1 B. & S. 638.

Secondly, the original allottee cannot, it would seem, compel the purchaser of his scrip to come forward and take the shares off his hands. (*a*)

Thirdly, the company has no remedy whatever against a person who has taken scrip by transfer. If he present himself, he is entitled to be registered; but if he stand in the background, he has a right so to do, and to drive the company to the resource of taking the original allottee as a shareholder. (*b*)

Agreement to take shares.

The question as to what amounts to a binding agreement to take shares, is often one of considerable difficulty.

The Standing Orders of Parliament formerly required, in the case of railway bills and other similar bills, that a subscription should be entered into under a contract to the amount of three-fourths of the estimated expense of the work. In such cases, therefore, no doubt could arise, that all the parties to such a contract were liable to be registered as shareholders. (*c*)

(*a*) *Jackson* v. *Cocker*, 4 Beav. 59; *Humble* v. *Langston*, 7 M. & W. 517.

(*b*) *London Grand Junction Ry. Co.* v. *Freeman*, 2 Man. & Gr. 606; *Daly* v. *Thompson*, 10 M. & W. 309; *Newry and Enniskillen Ry. Co.* v. *Edmunds*, 2 Ex. 118; 5 Ry. Ca. 275; *Wolverhampton New Waterworks Co.* v. *Hawkesford*, ubi supra.

(*c*) Subscriber and subscriber's agreements; *Thames Tunnel Co.* v. *Sheldon*, 6 B. & C. 341; *Kidwelly Canal Co.* v. *Raby*, 2 Price, 93; *London and Continental Insurance Co.* v. *Redgrave*, 4 C. B., N. S. 524; *Brownlow* v. *Nixon*, 2 H. & N. 465; *Aldham* v. *Brown*, 7 Ell. & Bl. 164, 2 E. & E. 398; *Carew's case*, 7 De G.

Subscribers of Memorandum of Association under Act of 1862.

Under the Companies Act 1862 the subscribers of the memorandum of association are (by s. 23) bound to take from the company as many shares as they have subscribed for whether or not the shares are actually allotted to them. (*a*) And this obligation is not satisfied by the allotment at a subsequent period of nominally paid-up shares. They must be paid for; not necessarily in money, but either in money or in money's worth. (*b*)

Moreover, since the passing of section 25 of the Companies Act 1867 (*c*), which enacts that every share shall be subject to the payment of the whole amount thereof in cash, unless it is otherwise determined by a written contract filed with the Registrar of Joint Stock Companies, shares can only be paid for in money's worth in pursuance of such a written contract. (*d*)

M. & G. 43; *Ex parte Davidson*, 4 K. & J. 688; *Norman v. Mitchell*, 5 De G. M. & G. 648; *Midland Great Western Ry. Co. (Ireland) v. Gordon*, 16 M. & W. 804. *Burke v. Lechmere*, L. R. 6 Q. B. 297. As to meaning of "subscribe," see *ex parte Hawkins*, 2 K. & J. 253.

(*a*) *Evans' case*. 2 Ch. 427; *Migotti's case*, 4 Eq. 238; *Baron de Beville's case*, 7 Eq. 11; *Hall's case*, 5 Ch. 707; *Sidney's case*, 13 Eq. 228.

(*b*) *Drummond's case*, 4 Ch. 772; *Pell's case*, 5 Ch. 11; *Forbes' & Judd's case*, ib. 270, *Baglan Hall Colliery Co.*. ib. 346; *Jones' case*, 6 Ch. 48; *Dent's case*, 8 Ch. 768, per Lord Selborne.

(*c*) 30 & 31 Vict. c. 131.

(*d*) As to the meaning of payment in cash, see *Fothergill's case*, 8 Ch. 270, before the full court, *Sparyo's case*, ib. 407; *Coates' case*, 17 Eq. 169; and note to s. 25 of the Act of 1867, infra.

This section may, no doubt, lessen certain dangers and abuses arising out of the practice of payment or part payment of vendors contractors and others, on the launch of a company, by large issues of shares to which no liability attaches. At the same time, it cannot fail to cause inconvenience and possibly hardship, since it extends to all companies whether formed under the Act of 1862, private Act of Parliament, or otherwise, and will require the filing of almost all railway contracts, and of all transactions in which paid-up shares form any part of the consideration given by the company.

Agreement by application for, and allotment of Shares.

Whether an application for shares followed by allotment constitutes a contract, must be determined on the principles which govern ordinary contracts. There must be an offer, and an acceptance of that offer, communicated to the party making the same.

If then, the letter of application contain on the part of the writer an unconditional offer to take shares, and an answer be returned amounting to an unconditional allotment of the shares applied for, the two documents taken together make a complete agreement.

For example, if a letter addressed in the following terms:—

"To the Directors of the Junction Company.

"Gentlemen,—I request you will allot me 20 shares in the Junction Company, and I agree to accept the same or any less number you may allot me, and to pay the deposit thereon.

(Signed) A. CAPPER:"

be answered as follows :—

"To A. Capper, Esq.

"Sir,—In accordance with your request, the Directors of the Junction Company have allotted you 20 shares in the Junction Company.

(Signed) J. M. BROWN,
Secretary,"

there can be no doubt that Mr. Capper is bound to take the shares. (*a*)

But where there is no communication in response to the applicant by the company, even though his name be placed on the register, the agreement is incomplete. (*b*) The company may say, "We put you on the register, and you might have looked at it." But that is only a circumstance to be considered, and will not conclude the matter. At the same time, it is not necessary that the response should be in writing, only there must be either in writing or verbally, or by conduct, something to show the applicant that his application was acceded to by the company. (*c*)

(*a*) See *Yelland's case*, 5 De G. & Sm. 395. Parol agreement and payment of deposit, *Cookney's case*, 3 De G. & J. 170.

(*b*) *Carmichael's case*, 17 Sim. 163; *Conway's case*, 5 De G. & Sm. 150; *Best's case*, 2 De G. J. & S. 650; *Pellatt's case*, 2 Ch. 527; *Sahlgreen & Currall's case*, 3 Ch. 323.

(*c*) *Gunn's case*, 3 Ch. 40; *A. Levita's case*, ib. 36; *Fletcher's case*, 37 L. J., Ch. 49; *Richards* v. *Home Assur. Association*, L. R., 6 C. P. 591. The allotment must be made within a reasonable time in order to bind the applicant; *Ramsgate Hotel Co.* v. *Montefiore*, L. R., 1 Ex. 109; *Baily ex parte*, 3 Ch. 592. Acceptance by executing transfer, *Crawley's case*, 4 Ch. 323; compare *Ward's case*, 10 Eq. 659. Notice of allotment to agent,

Effect of introduction of condition in application or reply.

Thus far the case of an unconditional offer and unconditional allotment has been considered, but a condition may be inserted either by the applicant in his application, or by the company in their reply. In each case, unless the condition is assented to by the other party, the contract is incomplete. (*a*)

The case is different where the condition assumes the form of an undertaking contained in the letter of application.

For example, if the letter of application state "I agree

Robinson's case, 4 Ch. 330; *G. H. Levita's case*, 5 Ch. 489. Withdrawal before notice of allotment, *Hebb's case*, 4 Eq. 9; orally, *Wilson's case*, 20 L. J., 962. Where a person became agent of a company on the terms of taking shares and afterwards applied for shares, notice of allotment was considered unnecessary, *Davis' case*, W. N. 1872, 43, 66. *Bloxam's case*, 33 Beav. 529, 4 D. G. J. & S. 447, was rather a special case, and is not an authority in opposition to the cases above cited. *Adams' case*, 13 Eq. 474, turned on the fact that A. being a shareholder in the B. company was entitled, under the terms of an amalgamation with the C. company, to a definite number of shares in that company, if he chose to apply for them.

A person applying for shares in a false name or in the name of a person incapable of contracting, will be made a contributory in respect of such shares himself.—*Pugh & Sharman's case*, 13 Eq. 566.

(*a*) Condition introduced by applicant, *Wood's case*, 3 De G. & J. 85; *Howard's case*, 1 Ch. 561; *Shackleford's case*, ib. 567; *Rogers' case*, 3 Ch. 636; *Gorrissen's case*, 8 Ch. 507. Condition introduced by company, *Duke* v. *Andrews*, 2 Exch. 290; *Oriental Steam Co.* v. *Briggs*, 2 Joh. & H. 625; *Addinell's case*, 1 Eq. 225; *Jackson* v. *Turquand*, L. R., 4 H. L. 305; *Beck's case*, 9 Ch. 392; *Pentelow's case*, 4 Ch. 178, and see *Peck's case* distinguished, ib. 531.

to accept the shares, and I authorize the directors to apply the deposit in payment of the preliminary expenses," the applicant cannot repudiate the shares allotted to him on the ground that a condition is attached, that the directors may pay preliminary expenses out of the deposits. (*a*)

Where the company have assented to a condition to be performed by them, but the condition has become incapable of performance, there is no contract binding the applicant. (*b*)

From the cases where the contract is incomplete or not binding, for the reasons above mentioned, must be distinguished cases where the contract to take shares is absolute, although accompanied by a collateral contract. The question to be determined is thus stated by Lord Cairns in *Elkington's case.* "Did Messrs. Elkington intend and agree to become members and shareholders *in præsenti* with a collateral agreement as to what should be the effect of their so becoming shareholders? or on the other hand did Messrs. Elkington agree that if, and when, a certain preliminary condition should be performed and not otherwise, they would become members and shareholders?" If the answer to the first question be in the affirmative, the applicant will accordingly (whatever may be his title as against the company or individual members to indemnification) be held bound as a shareholder. (*c*)

(*a*) See *Peel's case*, 4 Ch. 532.

(*b*) *Pellatt's case*, 2 Ch. 527; *Simpson's case*, 4 Ch. 184.

(*c*) *Elkington's case*, 2 Ch. 522; *Thompson's case*, 34 L. J., Ch. 527; *Bridger's case*, 5 Ch. 305. Observations on *Pellatt's case* and *Elkington's case*, in *Fletcher's case*, 37 L. J., Ch. 49.

An allotment in pursuance of an *ultra vires* agreement is invalid, (*a*) but a person who has agreed to take shares may, notwitstanding informality or irregularity in the contract, estop himself by conduct showing adoption of the contract from denying that he is a shareholder. (*b*)

Allotment ultra vires.

An agreement to *place* shares does not amount to an agreement to take shares. (*c*)

Agreement to place shares

A recent case (*d*) decided by the full Court of Appeal in Chancery may be considered to have cleared up some apparent conflict of authority as to the effect of becoming a director of a company, the regulations of which require a director to hold a certain number of shares as a qualification. According to that case an agreement to take shares from the company is not (in the absence of express contract) to be inferred from the mere fact of a man's becoming a director. Though bound by the constitution of the company to possess the qualification if he acts, he may yet acquire the qualifying shares in any legal mode open to him. (*e*) But it is

Share qualification of directors. *Brown's case.*

(*a*) *Coleman's case*, 1 De G. J. & S. 495; *Mallorie's case*, 2 Ch. 181.

(*b*) *Birmingham Bristol &c. Co.* v. *Locke*, 1 Q B. 256; *Cheltenham &c. Ry. Co.* v. *Daniel*, 2 Q. B. 281; *W. Cornwall Ry. Co.* v. *Mowatt*, 15 Q. B. 528; *Hull Flax Co.* v. *Wellesley*, 6 H. & N. 38; compare *Galvanized Iron Co.* v. *Westoby*, 8 Ex. 17; *Waterford &c. Ry. Co.* v. *Pidcock*, ib. 279.

(*c*) *Gorrissen's case*, 8 Ch. 507.

(*d*) *Brown's case*, 9 Ch. 101.

(*e*) *Marquis of Abercorn's case*, 4 D. F. & J. 78, and see *Stock's case*, 11 W. R. 814, 994; *Tothill's case*, 1 Ch. 85; *Chapman's case*, 2 Eq. 567.

quite another question whether such an agreement may not be inferred where shares needful for his qualification are found registered in the ordinary course of business of the company in the name of a man who has assented to become, and has acted as a director. In such a case he will not be allowed to repudiate them (*a*)

Effect of change in objects of Company.

A person who has agreed to take shares in an inchoate company will not be held liable as a shareholder if the nature or objects of the company as formed are different from those of the company in which he applied for shares. (*b*) But it is otherwise if the terms of his agreement authorize a departure from the original scheme, (*c*) or if after notice of the departure he does not assert his claim to withdraw. (*d*)

As will appear hereafter, a concluded agreement to

(*a*) *Roney's case*, reported with *Stock's case*, ubi. supra; *Currie's case*, 3 D. J. & S. 367, 32 L. J., Ch. 421; and *Disderi & Co.* 11 Eq. 242; *Leeke's case*, 6 Ch. 469; *Harward's case*, 13 Eq. 60, as explained by Lord Selborne in *Brown's case*, ubi. supra; *Fowler's case*, 14 Eq. 316; *Green's case*, 18 Eq. 428. Director named in local Act which specified 25 shares as the qualification held liable, *Kincaid's case*, 11 Eq. 192. The words "future qualification" inserted in an amended article of association mean the qualification of directors subsequently appointed, *Lord C. Hamilton's case*, 8 Ch. 548; see also *Forbes' case*, ib. 768, and *Stock's case*, ubi. supra.

(*b*) See *Fox* v. *Clifton*, 6 Bing. 776; *Pitchford* v. *Davis*, 5 M. & W. 2.

(*c*) *Midland Great Western Ry. Co. (Ireland)* v. *Gordon*, 16 M. & W. 804; *Brownlow* v. *Nixon*, 2 H. & N. 455, 3 ib. 686; *London, &c., Insurance Co.* v. *Redgrave*, 4 C. B., N. S. 524.

(*d*) *Tredwin* v. *Bourne*, 6 M. & W. 461.

take shares in a formed company can only be repudiated on the ground of fraud or misrepresentation, and that not as against creditors. (*a*)

If a member of a company individually contracts to take shares in a company with which his old company amalgamates, he will, even though the amalgamation be invalid, be liable as against creditors as a contributory on those shares. (*b*) But where there is no personal contract with the new company, he is not bound. (*c*)

Time of conclusion of agreement.

With regard to the time of conclusion of an agreement to take shares, it is important to observe that a contract is accepted by the posting of a letter declaring its acceptance, (*d*) and this, although the letter may not have been delivered in due course of post owing to default of the Post Office (*e*) or of the person offering the contract in giving a wrong address, (*f*) and (*semble*) although the letter is not received at all. (*g*)

There is nothing to prevent one trading corporation

(*a*) *Oakes* v. *Turquand*, L. R., 2 H. L. 325. Infra, p. 72.

(*b*) *Hare's case*, 4 Ch. 503. *Challis' case*, 6 Ch. 266.

(*c*) *Alabaster's case*, 7 Eq. 273; *Stace and Worth's case*, 4 Ch. 682; *Dougan's case*, 8 Ch. 540.

(*d*) *Adams* v. *Lindsell*, 1 B. & A. 681; *Dunlop* v. *Higgins*, 1 H. L. C. 381; *Harris' case*, 7 Ch. 587.

Reidpath's case, 11 Eq. 86, is scarcely consistent with the above.

(*e*) *Dunlop* v. *Higgins*, ubi. supra, and see *Stocken* v. *Collein*, 7 M. & W. 515.

(*f*) *Townsend's case*, 13 Eq. 148.

(*g*) See the observations in *Harris' case*, ubi. supra, and in *Wall's case*, 15 Eq. 18.

Against these authorities there is the unsatisfactory case of

from taking shares in another trading corporation, if authorised so to do by its own constitution. (*a*)

Invalidity of contracts by inchoate companies

Another point to be noticed respects the validity of contracts entered into by the promoters on behalf of the intended company.

In the formation of railway companies it is an every day practice for the promoters to buy off the opposition of landowners by agreeing to give large prices for their lands, or to make extensive works for their accommodation.

Again, in establishing joint-stock companies, the promoters agree with a patentee to purchase his patent at a particular price, or with a useful agent to engage his services at a particular salary.

Now, with respect to all these agreements, it may be said at once that they are absolutely void, unless they are embodied in the Act of Parliament, or in the articles of association of the company.

It was indeed once thought (and held by Lord Cottenham) (*b*) that contracts entered into by promoters are or may be binding on the company when formed. This doctrine cannot now be considered law, and the result of the later cases is that promoters who choose to make contracts "on behalf of" a non-existent

British & American Telegraph Co. v. *Colson*, L. R., 6 Ex. 108, in which, however, the letter of acceptance was not received.

(*a*) *Barned's Banking Co.*, 3 Ch. 105; *Royal Bank of India's case*, 4 Ch. 252.

(*b*) See cases cited in *Earl of Shrewsbury* v. *N. Stafford Ry. Co.*, 1 Eq. 593.

company, do so at their own risk, and are exclusively liable thereon. Nor is an attempted subsequent ratification by the company on its coming into existence of any avail, since (to use the words of Willes, J., in *Scott* v. *Lord Ebury*,) "putting out of view the cases of assignees of bankrupts and administrators, there is no case in which a person can by a subsequent ratification, make himself liable as principal so as to discharge the agent where the principal was not in existence at the time of the original contract" (*a*). There may, however, still be cases in which a Court of Equity would (as in *Edwards* v. *Grand Junc. Rail. Co.*) (*b*) restrain a company from reaping the benefit of a contract made by its promoters without performing the stipulations agreed to by them.

The cause of this avoidance arises from the very nature of an incorporated company.

If Jones, Green, and Smith unite to get up a steamship company, they act as individuals, and any con-

(*a*) *Scott* v. *Lord Ebury*, L. R., 2 C. P. 255; *Kelner* v *Baxter*, ib. 174; *Caledonian, &c., Ry. Co.* v. *Helensburgh Harbour Trustees*, 2 Macqueen, 391; *Leominster Canal Co.* v. *Shrewsbury & Hereford Ry. Co.*, 3 K. & J. 654; *Scottish N. E. Ry. Co.* v. *Stewart*, 5 Jur. N. S. 607; and *Earl of Shrewsbury* v. *N. Stafford Ry. Co.*, 1 Eq. 593, in which the cases were reviewed.

In *Williams* v. *St. George's Harbour Co.*, 2 De G. & J., 547, the company had allowed judgment in an action for breach of the contract to be entered against them. As to arrangement with contractors to subscribe for shares for the purpose of complying with standing orders of parliament, see *ex parte Davidson*, 4 K & J. 688.

(*b*) 1 M. & Cr. 650.

tract they may enter into binds them personally; but as soon as they are incorporated under the name of The Patent Steamship Company, their individual characters drop off. They become part of an incorporated body, which has only just sprung into existence, and which cannot be bound by contracts made between other parties before it came into being.

Of course if a promoters' contract be not *ultra vires* of the company when formed, and the person dealing with the promoters assent to the substitution of liability, it is open to the company by a new agreement to adopt such contract.

Publication of contracts in prospectus. 30 and 31 Vict., c. 131, s. 38.

By s. 38 of the Companies Act 1867, it is enacted that (1) every prospectus of a company; and (2) every notice inviting persons to subscribe for shares in any joint stock company, shall be deemed fraudulent on the part of the promoters, directors, and officers of the company knowingly issuing the same, as regards any person taking shares in the company on the faith of such prospectus, unless it specifies the dates and the names of the parties to any contract entered into by the company, or the promoters, directors, or trustees thereof, before the issue of such prospectus or notice, whether subject to adoption by the directors or the company, or otherwise; or unless the person taking shares has notice of the contract. (*a*)

Allowance to promoters.

Promoters will be allowed any moneys to which they may fairly be entitled; but a secret agreement

(*a*) As to the construction of this section see note there.

between them and vendors of property to the company will invalidate their claim. (*a*)

The difficulties attending the transactions of a company in its inchoate state of existence are so formidable, that, in a case where a company is formed under The Companies Act 1862, it is unadvisable to issue a prospectus or to solicit subscriptions until such time as the company is incorporated by registration.

The printed memorandum and articles of association should then be circulated, with a short prospectus stating generally the objects of the company, and referring for details to the memorandum and articles.

Advantages of registering Parliamentary Companies under Act of 1862.

As large expenses must be incurred, and support must be obtained for a parliamentary company before a bill can be brought in, the best course would seem to be, to register such a company under the Act of 1862, as a preliminary company formed for the purpose of obtaining a special Act of Parliament.

This plan puts an end at once to all the questions that have been discussed with respect to subscribers. The subscriptions are made by shareholders, and the rights of the shareholders and directors are accurately defined by the memorandum and articles of association.

Moreover, no doubt can be raised as to the validity of the contracts entered into with landowners and others, before the special Act is obtained. If the company be re-incorporated by the special Act, the

(*a*) *Beck* v. *Kantorowicz*, 3 K. & J. 230. *Ex parte Williams*, 2 Eq. 216. *Bank of Turkey* v. *Ottoman Co.*, 2 Eq. 366.

usual clauses may be inserted, transferring the liabilities of the old company to the new; and even in the absence of such clauses, the law itself will effect the transfer.

On the other hand, if the more convenient course be adopted, of leaving the company incorporated under the Act of 1862, and of conferring only, by the special Act, powers of taking land, or such other powers as require the authority of a special Act, all contracts will necessarily remain undisturbed, as the company itself will not be affected by the special Act, but will be governed by its memorandum and articles of association, instead of by the Companies Clauses Act.

CHAPTER III.

MEMBERSHIP IN A COMPANY.

MEMBERSHIP in an ordinary joint-stock company is constituted by the possession of one or more of the shares into which the capital of the company is divided (*a*). Membership in company.

Shares are not an interest in land within the 4th Shares.

(*a*) In *Greenshield's case*, 5 De G. & S. 599, the court said that "shares in an incorporated company are property in a strict sense of the term, and are distinguishable from shares in an unincorporated company, which merely convey a certain right to participate in the partnership property, and in the absence of any express provision to the contrary, are determined by the death or bankruptcy of the holder." This description of shares in an unincorporated company would seem to be scarcely accurate, unless the expression "unincorporated company" is confined to a mere private partnership, in which the death or bankruptcy of any one member puts an end to the firm altogether. In a company—whether unincorporate or corporate—that has transferable shares, the *personal* connection between a member and his company is of *necessity* dissolved by death, and *may* be dissolved by bankruptcy; but in neither case can his shares be said to be *determined*, as the company subsists as heretofore, and until the shares are transferred into some other name, the estate of the deceased or bankrupt is entitled to receive the profits, and must discharge the obligations arising therefrom.

Probably the observations of the court in the above case were intended only to meet the argument urged by counsel on the

section of the Statute of Frauds, nor goods within the 17th section, and certificates of shares are not goods within the meaning of the Factors Act, 5 & 6 Vict. c. 39 (*a*); and consequently a parol contract respecting them will be binding (*b*). Shares are declared by statute to be personal estate in the case of companies regulated by the Companies Clauses Consolidation Act 1845, and the Companies Act 1862, and even in the absence of any provision will be personal estate, except in certain special cases, where the shareholders take a direct interest in the land (*c*).

Specific performance of contract to take shares.

The expected benefit to be derived from becoming a member of a company is a sufficient consideration to

authority of the *South Staff. Rail. Co.* v. *Burnside*, 5 Exch. 129, that a bankrupt shareholder ought to be a contributory.

In that case an action for calls was sustained against a certificated bankrupt, on the ground that, according to the existing law his assignees had a right to disclaim the shares, and that, having in fact disclaimed them, the shares continued in the bankrupt. To this the court might well reply by drawing a distinction between shares in a corporate company, which, according to the provisions of the existing Acts of Parliament continued in the bankrupt, and shares in an unincorporate company, the holder of which on bankruptcy ceased to be a member of the company. As to the effect of bankruptcy under the Companies Act, 1862, see ss. 75 and 77 and notes.

(*a*) *Freeman* v. *Appleyard*, 7 L. T., N. S. 282.

(*b*) *Duncuft* v. *Albrecht*, 12 Sim. 189; *Knight* v. *Barber*, 16 M. & W. 66; *Humble* v. *Mitchell*, 11 Ad. & Ell. 205; *Cookney's case*, 3 De G. & J. 170.

(*c*) New River shares are real estate, *Townsend* v. *Ash*, 3 Atk. 336. As to Statute of Mortmain, see *Meyers* v. *Perigal*, 2 De G. M. & G. 599; *Edwards* v. *Hall*, 6 De G. M. & G. 74; *Morris* v. *Glyn*, 27 Beav. 218.

support a contract to take shares, and such contract may be enforced in equity by a suit for specific performance, or damages may be recovered at law for its non-performance (*a*).

If a bill is filed by a vendor for the specific performance of a contract to take shares, a reference will be directed as to title (*b*); but, on the title being proved, which is almost a matter of course, a decree will be made against the purchaser, compelling him to take the shares, to repay to the vendor any calls that have been paid since the date of the contract, and to give an indemnity against any future calls that may be made before the transfer is complete (*c*).

If the approval of the directors be required to a transfer, a contract to sell shares will be construed as conditional on that approval being given (*d*).

A shareholder is of course liable to pay all calls **Calls.**

(*a*) Bill by Company, *New Brunswick, &c., Co.* v. *Muggeridge*, 4 Dr. 686, 1 Dr. & Sm. 363; *Oriental Steam Co.* v. *Briggs*, 2 Joh. & H. 625, 4 D. G. F. & J. 191, showing how *Sheffield Gas Consumers Co.* v. *Harrison*, 17 Beav. 294, may stand with the first case. Proceedings by vendors of shares, *Duncuft* v. *Albrecht*, 12 Sim. 189; *Cheale* v. *Kenward*, 3 De G. & J. 27, *Humble* v. *Langston*, 7 M. & W. 517; *Josephs* v. *Pebrer*, 3 B. & C. 639. As to title to shares in cost-book mining company, *Curling* v. *Flight*, 6 Hare 41, 12 Jur. 91.

(*b*) *Shaw* v. *Fisher*, 2 De G. & Sm. 11, 5 De G. M. & G. 596.

(*c*) *Wynne* v. *Price*, 3 De G. & Sm. 310; infra, p. 62.

(*d*) *Bermingham* v. *Sheridan*, 33 Beav. 660; but see *Evans* v. *Wood*, 5 Eq. 14; *Paine* v. *Hutchinson*, 3 Ch. 393. In *Poole* v. *Middleton*, 29 Beav. 646, the deed of settlement required approval only to the *mode* of transfer.

duly made on his shares, but he may plead to an action for calls, that, though his name is on the register, he is not rightly a shareholder, or that the call is made by persons who have no power to make it, or for a purpose not warranted by the constitution of the company. Indeed, any of the reasons hereinafter mentioned as defences to be made by a contributory in the event of the company being wound up, would appear on principle to be available in support of his plea, though practically it is found that a court of law has a great repugnance to entertain matters of purely equitable jurisdiction (*a*).

A call is constituted by a circular letter, informing the shareholders that the directors have made a call (*b*), but it dates from the passing of the resolution authorising the call, and not from the time at which notice is given to the shareholders (*c*).

(*a*) *Shropshire Rail. Co.* v. *Anderson*, 3 Exch. In *Howbeach Coal Co.* v. *Teague*, 6 Jur. N. S. 275, an opinion is expressed by Martin, B., that a call may be resisted on the ground that a company, though registered under the Joint-Stock Companies Acts, 1856, 1857, is abortive, and incapable of exercising its functions until the whole or a reasonable portion of its nominal capital has been subscribed for. This opinion is overruled by the 18th section of the Companies Act 1862, and *Macdougall* v. *Jersey Hotel Co.*, 2 Hem. and M. 528; and see *N. Stafford Steel Co.* v. *Ward*, L. R. 3 Ex. 172.

A plea of fraud and prompt repudiation of the shares is good. *Bwlch-y-Plwm Lead Mining Co.* v. *Baynes*, L. R. 2 Ex. 324.

(*b*) *Shaw* v. *Rowley*, 16 M. & W. 810; *Cornwall Great Mining Co.* v. *Bennett*, 5 H. & N. 423, as to mode of making call; *Moseley Gold Mining Co.* v. *Garnett*, 11 W. R. 167, as to set off against call.

(*c*) *R.* v. *Londonderry, &c., Rail. Co.*, 13 Q. B. 998. As to

It is no objection to a call that it is made payable at a future day (*a*) or by instalments (*b*), and the resolution making the call need not specify the persons to whom, or the time at which it should be paid, as such matters may be left to the advertisement (*c*).

The title of the shareholder must be complete before he is liable at law to pay calls; therefore, if an Act require (*d*) that, in order to constitute a shareholder, his name must be entered on the register of shareholders, or that he must execute a particular deed (*e*), no action can be maintained against him until the act required to complete his title has been performed (*f*).

A court of equity will compel a person who has bound himself by contract to take shares to clothe himself with a legal title (*g*), and at law a defendant may, by claiming to be registered or representing him-

notice, *Miles* v. *Bough*, 3 Q. B. 845; *Newry & Enniskillen Ry. Co.* v. *Edmunds*, 2 Ex. 118; *Shackleford, Ford & Co.* v. *Dangerfield*, L. R., 3 C. P. 407.

(*a*) *Sheffield & Manchester Rail. Co.* v. *Woodcock*, 7 M. & W. 574.

(*b*) *N. Western Rail. Co.* v. *McMichael*, 6 Exch. 273.

(*c*) *Great North of England Rail. Co.* v. *Biddulph*, 7 M. & W. 243.

(*d*) As for example, the Companies Clauses Act.

(*e*) As was required by the Act of 7 & 8 Vict. c. 110.

(*f*) *Newry, &c., Rail. Co.* v. *Edmunds*, 2 Exch. 118; *Galvanised Iron Co.* v. *Westoby*, 8 Exch. 17; *Ex parte Neilson*, 3 De G. M. & G. 556.

(*g*) See *New Brunswick, &c., Co.* v. *Muggeridge*, 4 Dr. 686.

self as a shareholder, estop himself from pleading the defence that his title is not complete (*a*).

Dividends.

The right of a shareholder to dividends is of course governed by the regulations of the company. Dividends are supposed to be paid out of profits; and if directors order a dividend to be paid when no profits have been made, without expressly saying so, a gross fraud is practised, and the directors are not only civilly liable to those whom they have deceived and injured, but are guilty of a conspiracy, for which they are liable to be prosecuted and punished (*b*).

Rights of preference shareholders.

Cases with respect to dividends are rarely brought into court. An exception, however, occurred on the occasion of a dispute between the preference shareholders and the ordinary shareholders of the Great Northern Railway, and it became necessary in that case for the court to consider the meaning of the term "dividend," and to define the relative rights of the preference and the ordinary shareholders.

The origin of the dispute was the commission of a series of frauds on the company, which rendered the profits at the period of distribution insufficient to pay in full the dividends due to the preference shareholders. Under these circumstances it was contended

(*a*) *Cheltenham, &c. Rail. Co.* v. *Daniel*, 2 Q. B. 281. See above p. 43, n. (*b*). As to calls in cost-book companies, see 32 & 33 Vict. c. 19, ss. 10–13.

(*b*) *Burnes* v. *Pennell*, 2 H. L. C. 497. Injunction granted to restrain payment out of capital, *Bloxam* v. *Metropolitan Ry. Co.*, 3 Ch. 337; and see *Hoole* v. *G. W. R. Co.*, ib. 262. Compare *Burdwell* v. *Sheffield Waterworks Co.*, 14 Eq. 517.

on the part of the preference shareholders that a preferential dividend, in the absence of a contract limiting its meaning, must mean a dividend to be paid out of profits whenever realised before the ordinary shareholder could receive anything, and consequently that the preference shareholders were entitled to be paid their arrears of dividends out of subsequent profits.

To this it was replied, that dividend meant only a share of the profits to be divided at any particular period, and that to talk of arrears of a dividend amounted to an absurdity.

The court assented to the contention of the preference shareholders, and decided that if the profits at any period of distribution were insufficient to meet the claims of the preference shareholders, they might indemnify themselves for their loss out of any subsequent profits, to the exclusion of the ordinary shareholder.

With respect to the meaning of the word dividend, the court held that "dividend," looking at its derivation, meant obviously the fund to be divided, not the share of any particular partner or person in the fund, but that, in its secondary sense, as used in Acts of Parliament, it meant the aliquot portion of the profits which each shareholder was entitled to receive; and that a preferential dividend was substantially the same as interest chargeable only on profits (*a*).

(*a*) *Henry* v. *Great Northern Ry. Co.*, 1 De G. & J. 606; *Matthews* v. *Great Northern Ry. Co.*, 5 Jur. N. S. 284. Dividends are apportionable under 4 & 5 Wm. IV. c. 22; *Hartley* v. *Allen*, 4 Jur. N. S. 500; see now 33 & 34 Vict. c. 35, *Jones* v. *Ogle*, 8 Ch. 192.

The decision in question is overruled by the Companies Clauses Act 1863 (26 & 27 Vict. c. 118), in the case of companies authorised by any special Act, which incorporates Part II. of that Act, to issue new preference shares (*a*).

Transfer of shares.

The right of a shareholder to transfer his shares is, by virtue of s. 22 of the Act of 1862, *primâ facie* unlimited, but may be restricted by regulations of the company requiring (for example) payment of all calls due on the shares (*b*), or the sanction of the directors. Directors have not, independently of such express provision, a general discretionary power to refuse to register a transfer, assuming the transaction to be *bonâ fide*; that is to say, an out-and-out disposal of the shares without retaining any interest in them (*c*).

A power to directors to refuse to register must be exercised reasonably (*d*); but they are under no obligation to send notice to a transferor of their refusal (*e*);

(*a*) See ss. 13, 14. Preference shareholders are not entitled on winding-up to any preference in the division of capital. *London India Rubber Co.*, 5 Eq. 519.

(*b*) See on the provisions of the Companies Clauses Act (8 Vict. c. 16, s. 16); *Hubbersty* v. *Manchester, &c., Ry. Co.*, L. R., 2 Q. B. 471.

(*c*) *Weston's case*, 4 Ch. 20, per Wood, L. J.; *Stranton Iron Co.*, 16 Eq. 559.

(*d*) *Robinson* v. *Chartered Bank*, 1 Eq. 32.

(*e*) *Gustard's case*, 8 Eq. 438: in *Anderson's case*, 8 Eq. 559, V.-C. Stuart held a transfer passed by the directors under a mistake, and subsequently cancelled by the secretary, to be invalid. See also *Henry Holden's case*, 8 Eq. 444; *R.* v. *Inns of Court Hotel Co.*, 2 N. R. 397.

or, when acting *bonâ fide*, to give reasons for their refusal (*a*).

By director.

A director, under ordinary circumstances, may deal as freely with his shares as any other shareholder, his qualification excepted, if he remain a director.

But where a director availed himself of his position to get rid of his liability by obtaining a postponement of a call which ought in the interest of the shareholders to have been made, he was held to be a contributory (*b*).

Mode of transfer.

The Act of 1862 leaves the mode of transfer to the regulations of the company, which usually require a deed (*c*). It seems that in a company under the Act, shares transferable by delivery are illegal (*d*), unless they are fully paid-up shares in a limited company within the provisions of the Act of 1867 (*e*).

(*a*) *Ex parte Penney*, 8 Ch. 446.

(*b*) *Gilbert's case*, 5 Ch. 559, and see *Murray* v. *Bush*, L. R., 6 H. L. 37.

(*c*) See the provisions of Table A. The Companies Clauses Act requires a deed in all cases (s. 14). As to the provisions of the Companies Act 1867 requiring a company to register a transfer on the application of the transferor, infra, Part II., Chap. 8.

Deeds of transfer in blank are invalid, *Hibblewhite* v. *McMorine*, 6 M. & W. 200; *Tayler* v. *Great Indian Peninsular Ry. Co.*, 4 De G. & J. 559.

Forged transfers, *Taylor* v. *Midland Ry. Co.*, 28 Beav. 287, 8 H. L. C. 751; *Cottam* v. *Eastern Counties Ry. Co.*, 1 J. & H. 243; *Johnston* v. *Renton*, 9 Eq. 181. *Quære*, how far company liable if forgery effective through negligence of party claiming relief, *Swan* v. *North British Australasian Co.*, 7 H. & N. 603, 2 H. & C. 175.

(*d*) *Princess of Reuss* v. *Bos*, L. R., 5 H. L. 176.

(*e*) 30 & 31 Vict. c. 31, ss. 27, 36.

An error in the distinguishing numbers of the shares transferred is immaterial, if the transferor has at the time of the transaction as many shares as he professes to transfer; the numbers of shares being simply directory, for the purpose of enabling the title of particular persons to be traced (*a*).

Duty of transferor to provide a competent transferee.

It is the duty of a transferor to see that his transferee is legally competent to accept a transfer, and if he transfers to a person incapable of contracting—as a married woman or infant—he himself remains liable to be treated as a shareholder (*b*). A transfer to an infant, however, where no winding-up order has intervened before his majority, is not void but voidable, and an infant may be held to have affirmed the transaction by acquiescence on coming of age (*c*). After

(*a*) *Ind's case*, 7 Ch. 485; *Bishop's case*, ib. 296 *n*. A contract for the sale or transfer of shares or stock in a joint-stock banking company is by 30 & 31 Vict. c. 29, void, unless such contract sets forth the numbers distinguishing the shares or stock on the register; or (where there is no such register) the person in whose name the shares or stock stand in the books of the company.

(*b*) See as to infants, *Reid's case*, 24 Beav. 318; *Curtis' case*, 6 Eq. 455; *Capper's case*, 3 Ch. 458; *Symon's case*, 5 Ch. 298, approving *Costello's case*, 8 Eq. 504; *Weston's case*, 5 Ch. 614; *Maitland's case*, 38 L. J., Ch. 554; *Baker's case*, 7 Ch. 115, and cases in next note. Purchasers of shares who instructed their broker to have them transferred to an infant held liable to indemnify the vendor, *Brown* v. *Black*, 8 Ch. 939; *Nickalls* v. *Furneaux*, W. N. 1889, p. 48, and see *Maynard* v. *Eaton*, 9 Ch. 414.

(*c*) *Lumsden's case*, 4 Ch. 31; *Mitchell's case*, 9 Eq. 363; and see *Wilson's case*, 8 Eq. 240. *Laches* of the company may disentitle them to have the transferor's name placed on the list of

an adult shareholder is once obtained, intermediate transfers to infants cannot be avoided (*a*).

By s. 4 of the Married Women's Property Act 1870, any married woman or any woman about to be married is enabled to have any fully paid-up shares or stock of any incorporated or joint-stock company, to the holding of which no liability is attached, and to which she is entitled, registered in her name or intended name as a married woman entitled to her separate use; and upon registration the same are to be deemed her separate property and to be transferred and the dividends paid as if she were an unmarried woman (*b*). 33 & 34 Vict., c. 93, s. 4.

With regard to dealings with shares on the Stock Exchange, it is now established that, in the case of an ordinary sale to a jobber, the real contract, according to the rules and practice of the Stock Exchange which govern these dealings is, that at the settling day the jobber will either take the shares himself or give the name of a transferee or transferees who will pay for them, and to whom no reasonable objection can be taken (*c*). So soon as the jobber has produced a- Sale of shares on Stock Exchange.

contributories instead of that of an infant transferee, *Parson's case*, 8 Eq. 656.

(*a*) *Gooch's case*, 7 Ch. 266.

(*b*) On an application under this section the company must investigate the title, and if they refuse to register, a *mandamus* will be granted (unless a flaw in the title be shown) to compel them to register, *R.* v. *Carnatic Ry. Co.*, L. R., 8 Q. B. 299.

(*c*) Per Lord Hatherley in *Cruse* v. *Paine*, 4 Ch. 441; in this case and in *Maxted* v. *Paine* (No. 1), L. R., 4 Ex. 81; *Allen* v. *Graves*, L. R., 5 Q. B. 478; and *Merry* v. *Nickalls*, 7 Ch. 733, overruling *Rennie* v. *Morris*, 13 Eq. 203; the vendor was suc-

sufficient transferee his liability ceases. And, in the event of the transferee declining to complete and take on himself the burdens (if any) of the shares, a court of equity will enforce acceptance of the shares and indemnity of the transferor (*a*), or the transferor may maintain an action at law for breach of contract (*b*).

cessful in establishing liability of jobber: in *Grissell* v. *Bristowe*, L. R., 4 C. P. 36; *Coles* v. *Bristowe*, 4 Ch. 3; and *Maxted* v. *Paine* (No. 2), L. R., 6 Ex. 132; the jobber was held to have discharged his obligations. As to effect of special contract by jobber guaranteeing registration, *Cruse* v. *Paine*, ubi supra.

For an explanation of the practice of the Stock Exchange see portions of the special cases set out in *Grissell* v. *Bristowe*, before the Court of Common Pleas, L. R., 3 C. P. at page 118, and in *Maxted* v. *Paine* (No. 2) at page 205; also the rules of the Stock Exchange set out in *Grissell* v. *Bristowe*, on appeal, L. R., 4 C. P. at page 55, and more particularly as to the position of the jobber the judgment of Byles, J., in the court below, L. R., 3 C. P. at page 137, and *Merry* v. *Nickalls*, 7 Ch., p. 735.

(*a*) *Paine* v. *Hutchinson*, 3 Ch. 388; *Evans* v. *Wood*, 5 Eq. 9; *Hodgkinson* v. *Kelly*, 6 Eq. 496; *Sheppard* v. *Murphy*, Ir. L. R., 1 Eq. 590, affirmed 16 W. R. 948. Concealed principal, *Castellan* v. *Hobson*, 10 Eq. 47; *Torrington* v. *Lowe*, L. R., 4 C. P. 26. The fact that a call is made in the interval between the sale of the shares and the name day does not invalidate the contract; *Hawkins* v. *Maltby*, 3 Ch. 188 (though bill dismissed on the ground that the contract alleged was not proved), and on a fresh bill defendant was held liable to indemnify the plaintiff, 6 Eq. 505, 4 Ch. 200.

(*b*) *Bowring* v. *Shepherd*, L. R., 6 Q. B. 309; *Davis* v. *Haycock*, L. R., 4 Ex. 373.

See further on the subject of transfers, the cases in which the validity of transfers has been impeached on a winding-up, infra, p. 80; and as to the summary jurisdiction of the court under s. 35 of the Act of 1862, see note to that section.

Difficulties occur but seldom in the dealings of a prosperous company with its shareholders.

Repudiation of shares in going company.

Here or there an action may be brought for calls, or an effort made to impeach some act of the directors by filing a bill in equity; but as a general rule, if a shareholder be dissatisfied with his investment, or with the management of the company, he finds a purchaser willing to take a transfer of his shares, and retires from the company.

Individual misrepresentation not a ground for relieving shareholder from shares at law.

Suppose, however, any great depression to occur in the value of the shares, or large calls to be made without a corresponding return, an endeavour is frequently made by dissatisfied shareholders to refuse payment of their calls, or to repudiate altogether their shares, on the ground that they were induced to take them by the misrepresentation of the vendors as to the prospects of the company.

At law, the just principle seems to have been established, that a purchaser of shares cannot relieve himself from his contract, on account of misrepresentations made to him, unless he can show that he has disaffirmed the contract before receiving any benefit from it, and has not done any act to make himself a shareholder.

The consequence of the assertion of this principle has been that no case has been decided at law, in which a registered purchaser has succeeded in relieving himself from his shares or the obligations entailed by them, on the ground of misrepresentation made to him by an individual vendor.

His proper remedy is to bring an action on the case

against the person who has been guilty of the deceit, and to recover damages for the loss sustained (*a*).

Individual misrepresentation a ground for relieving shareholder in equity.

On the other hand, courts of equity have paid more regard to the claims of individual complainants than to public policy. They have decided that a purchaser of shares from an individual may compel the vendor to take back his shares on the ground of misrepresentation, even after the registration is completed(*b*). To this there is little objection if the company be solvent, as it scarcely matters to the creditor, under such circumstances, whether A. or B. is the holder of particular shares.

Misrepresentation by company a ground for relief both at law and in equity.

The courts have, however, gone further; and it is now settled, that a purchaser of shares from a company who has been induced to take them by misrepresentations of the company, may repudiate his contract as against the company either at law or in equity. The earlier decisions on this subject cannot indeed be reconciled, since while in some of them the right to relief was admitted, in others it was held that directors, in making false and fraudulent representations, are not agents of the company, so as to bind it, unless it can be shown that the whole company is a party to the fraud (*c*).

(*a*) As to actions on the case for deceit, see *Taylor* v. *Ashton*, 11 M. & W. 401; *Gerhard* v. *Bates*, 2 Ell. & Bl. 476; *Clarke* v. *Dickson*, 6 C. B. N. S. 453 (see 1 Ell. Bl. & Ell. 148); *Ellis* v. *Colman*, 4 Jur. N. S. 350; *Davidson* v. *Tulloch*, 3 Mcq. 783.

(*b*) *Stainbank* v. *Fernley*, 9 Sim. 556.

(*c*) See the cases classified, p. 72.

Macbride v. *Lindsay*, 9 Hare 574, in which a demurrer to the plaintiff's bill was allowed on the ground that the fraud

But the difficulties felt as to misrepresentation by a corporate body were disposed of by the case of *Western Bank of Scotland* v. *Addie* (*a*), in the House of Lords; and that case, coupled with the affirmation by the same tribunal of the decision of the L.JJ. in *Kisch* v. *Central Ry. Co. of Venezuela* (*b*), conclusively established the following proposition, namely,—A company cannot retain any benefit which they have gained through the fraud of their agents. Therefore, a person who has been induced to purchase shares by fraudulent misrepresentations or fraudulent concealment on the part of the company, through its agents, is entitled to be relieved from his shares *as against the company*, unless he is precluded from relief by lapse of time or the mode in which he has dealt with the shares (*c*).

What amounts to misrepresentation entitling a purchaser to relief.

Whether the statements or concealments in a given case amount to misrepresentation is not unfrequently a difficult question. It would seem, however, that to

complained of gave him no right to rescind his contract other than a right common to other shareholders who were not represented in the suit, illustrates another kind of difficulty; but see *Croskey* v. *Bank of Wales*, 4 Giff. 314.

(*a*) L. R., 1 H. L. Sc. 145. *Nat. Exchange Co. of Glasgow* v. *Drew*, 2 Mcq. 103.

(*b*) 3 De G. J. & S. 122, L. R., 2 H. L. 99. *Reese River Co.* v. *Smith*, L. R., 4 H. L. 64.

(*c*) According to some of the *dicta* in *W. Bank of Scotland* v. *Addie*, an action for damages on account of the misrepresentation cannot be maintained against the company, but only against the directors. But see *Barwick* v. *Eng. Jt. Stock Bank*, L. R. 2 Ex. 259, and the observations in *Mackay* v. *Comm. Bank of N. Brunswick*, L. R. 5 P. C. 394.

entitle a purchaser of shares to relief, whether as against an individual vendor or a company, the misrepresentation must be material with reference to the contract, *i. e.*, such as the purchaser would rely on in entering into the contract (*a*); and also that it must be clearly shown that, as a matter of fact, the purchaser did rely thereon (*b*).

Thus, misrepresentation includes any material variance between the prospectus and memorandum of association (*c*), but a mere difference between the language of the prospectus and that of the memorandum, or mere exaggeration as to the advantages of the company will not enable a purchaser to repudiate his shares (*d*). It is immaterial, so far as concerns an application to rescind the contract, whether the directors making the misrepresentation did or did not themselves believe it to be true (*e*).

(*a*) *Pulsford* v. *Richards*, 17 Beav. 87; *Heymann* v. *Central Eur. Ry. Co.*, 7 Eq. 154, and see *Kennedy* v. *Panama Mail Contract Co.*, L. R., 2 Q. B. 580.

(*b*) See *Hallows* v. *Fernie*, 3 Ch. 487; *Jennings* v. *Broughton*, 17 Beav. 234, 5 De G. M. & G. 126.

(*c*) *Stewart's case*, 1 Ch. 575.

(*d*) *Downes* v. *Ship*, L. R., 3 H. L. 343; *Denton* v. *McNeil*, 2 Eq. 352, and see *Central Ry. Co. of Venezuela* v. *Kisch*, L. R., 2 H. L. at p. 113, approving the "golden legacy" (*Henderson* v. *Lacon*, 5 Eq. 249) of V.-C. Kindersley in *New Bruns. & Canada Ry. Co.* v. *Muggeridge*, 1 Dr. & Sm. 363. See too and compare *New Brunswick, &c., Land Co.* v. *Conybeare*, 9 H. L. C. 711.

(*e*) *Smith's case*, 2 Ch. 604, and *Reese River Co.* v. *Smith*, L. R., 4 H. L., at p. 79; *Att.-Gen.* v. *Ray*, 9 Ch. 397; but see *Kennedy* v. *Panama Mail Contract Co.*, L. R., 2 Q. B. 580.

Bar of relief by lapse of time.

With respect to the lapse of time that will bar relief, a safe rule, laid down by Lord Cairns, was approved by the Lord Chancellor (Chelmsford), in *Oakes* v. *Turquand* (*a*), in the following words, "In a still later case, that of *Ex parte Peel* v. *Barned's Banking Co.* (*b*), Lord Cairns expressed an opinion on the subject of delay, to which I entirely subscribe. He said, 'It is the bounden duty of a person to ascertain, at the earliest practicable moment, what is the charter or title-deed under which the company, in which he has agreed to become a shareholder, is carrying on business. I think he ought to be held bound to look to the memorandum and articles of association before he applies for shares. But even when the memorandum and articles of association are not in existence at the time; I think, at the very latest, when he receives his allotment of shares he ought to satisfy himself that there is nothing in the memorandum or articles of association to which he desires to make any objection.' This appears to me to lay down a clear and precise rule, which will render unnecessary the consideration in each case whether a reasonable time has or has not elapsed from which acquiescence may be assumed, a question which has occasioned some variety, and apparent if not actual discrepancy in the decisions."

The rule thus stated goes far to remedy the injustice of holding that a shareholder of a *going* company can repudiate his shares to the obvious injury of

(*a*) L. R., 2 H. L. 325.
(*b*) 2 Ch. 674.

the innocent shareholders, and to the possible injury of the creditor (*a*).

Objection to repudiation of shares.

At the same time this throwing back of shares on the company appears open to great objection. Apart from the decided cases, it seems difficult to hold that the relation between a member of a company and the company is that of a contract in which two parties only are interested. The maintenance of the list of members unimpaired is a matter of importance to every member and every creditor of the company; and if A. or B. be allowed to throw up his shares, the liability of C., a shareholder, to contribute towards payment of the debts of the company will probably be increased, whilst the security of D., a creditor, will be diminished (*b*).

Nor does the case stand as if the refusal of a court of equity to interfere would have left unpunished the fraud of the persons who had deceived the shareholder,

(*a*) See *Nichols' case*, W. N. 1867, 77; *Ross* v. *Estates Investment Co.*, 3 Ch. 682; *Neill's case*, W. N. 1867, 120; *McNiell's case* (apparently determined on verbal repudiation), 10 Eq. 503, in which the applicants were successful; and *Pawle's case*, 4 Ch. 497, in which the shareholder, being substantially a party to proceedings by another shareholder, was relieved of his shares without filing a separate bill. On the other hand, the applicants were unsuccessful in *Whitehouse's case*, 3 Eq. 790; *Taite's case*, ib. 795; *Lawrence's case*; *Kincaid's case*, 2 Ch. 412; and *Ashley's case*, 9 Eq. 263, on various grounds of delay and acquiescence; and in *Briggs' case*, 1 Eq. 483, where there was an attempt to resell the shares.

That a contributory cannot raise the plea of misrepresentation after the commencement of the winding up, see post, p. 73.

(*b*) See now, however, the rule as to delay, stated in *Oakes* v. *Turquand*, supra, p. 66.

or left him without the means of obtaining a full indemnification. Nobody contends that the law does not give an adequate remedy in damages by means of an action for deceit (*a*); and, looking at the question in a practical point of view, it certainly would appear that the ends of justice would be better answered by holding a member to his shares, and enforcing with inflexible severity his indemnification by the parties who have made the misrepresentation, rather than by allowing the repudiation of the shares, and thus making the innocent shareholders suffer for the guilt of directors or others over whom they have no control, and from whom they can obtain no compensation. The possible loss to be sustained by the company has no terrors for a fraudulent promoter, a boasting director, or an agent who wishes to make things pleasant. But the same man would be deterred from attempting a deceit if he knew that the consequences would be visited upon his own head.

Contributories.

In the cases where actions are brought, or suits are instituted, for the purpose of rescinding a contract for the purchase of shares, the companies are usually carrying on business, and the efforts made to repudiate shares are exceptional, and confined to a few shareholders only.

Suppose, however, a worse state of things than a mere depression in the value of shares to ensue, and a company to become insolvent, a struggle imme-

(*a*) See cases cited in note (*a*), p. 64.

diately commences on the part of the company, to produce a list of solvent members capable of paying its debts, and on the part of those sought to be made liable, to escape from contribution by showing either that they have never undertaken the liabilities of shareholders, or that, having once undertaken them, they have duly transferred their shares, and thereby escaped from their liabilities.

It will be convenient to consider, first, the case of those who contend that they are not contributories by reason of their never having undertaken to become shareholders.

Allottees and applicants for shares.

This plea is sometimes put forward by an allottee of shares, whose name has never been placed on the register until the time comes for making him a contributory; or by an applicant for shares, whose name has been placed on the register against his consent or without his knowledge.

In either case, the liability depends on the question, whether a binding contract to take shares has been entered into between the company and the person unwilling to admit his liability; if the answer be in the affirmative, his name may, according to circumstances, be placed or retained on the list; if in the negative, the case against him fails, and the shares attempted to be fixed on him must be treated as unallotted.

The questions relating to the above class of alleged contributories are fully treated of in the chapter on Inchoate Companies, and examples are there given of incomplete and complete contracts to take shares (*a*).

(*a*) See above, p. 37, and following pages.

Under this head may be classed the cases in which incapacitated persons, such as married women (*a*) and infants (*b*), are registered as shareholders, and the law allows them to repudiate their shares on the ground of their inability to bind themselves by contract.

Married women and infants.

Under the winding-up acts of 1848-49, the question was often raised as to how far misrepresentation could be pleaded in bar to being made liable as a contributory.

Plea of misrepresentation against liability as a contributory—under Acts of 1848 49.

It was decided in some of the earlier cases that misrepresentations by individual members, or even by directors or managers of a company, were not available as a defence (*c*) against being made a contributory.

On the other hand, it was said that if the company in its corporate capacity made a misrepresentation, a contributory might avail himself of the circumstances, and repudiate his liability.

Lord Campbell, however, in *Mixer's case* (*d*), over-

(*a*) *Angas's case*, 1 De G. & S. 560; see note (*e*), p. 86.

(*b*) *Fenwick's case*, 1 De G. & S. 557; *Rearsley's case*, 1 De G. & S. 550. An infant must take care to repudiate his shares within a reasonable time after coming of age, *Cork and Bandon Rail. Co.* v. *Cazenove*, 10 Q B 935; *Newry, &c., Rail. Co.* v. *Coombe*, 3 Exch. 565; *Dublin & Wicklow Co* v. *Black*, 7 Rail. Ca. 434. See the cases cited supra, p. 60.

(*c*) *Bernard's case*, 5 De G. & S. 283; *ex parte Worth*, 6 Drew. 529, explaining *Brockwell's case*, 4 Drew. 205; *Ayre's case*, 25 Beav. 513.

(*d*) 4 De G. & J. 575; see also *Davidson* v. *Tulloch*, 3 McQ. 783, *Blake's case*, 34 Beav. 639; *Barrett's case*, 2 Dr. & Sm. 415, 3 De G. J. & S. 30; *Frowd, ex parte*, 30 L. J., N. S. 322.

ruled the previous decisions, and held that an allottee of shares who has become a shareholder, and has never attempted to get rid of his contract on the score of misrepresentation, is too late to set up such a defence when placed on the list of contributories. But again, *Mixer's case* was treated as not being an authority in *Blake's case*, and does not appear to have met with much approbation in *Barrett's case* (*a*).

Under Act of 1862. Case of *Oakes v. Turquand.*

In the proceedings that led to the above decisions, the rights of creditors were not in question. Since those decisions, however, the bold and able judgment

(*a*) 2 Dr. & Sm. 415; 3 De G. J. & S. 30. The following is a classification of the principal cases relating to misrepresentation prior to the case of *Central Rail. Co. of Venezuela* v. *Kisch*, L. R., 2 H. L. 99, according to the nature of the proceedings in which they arose.

1. Proceedings for payment of calls.—*Burnes* v. *Pennell*, 2 H. L. C. 497. A Scotch case, *Mangles* v. *Grand Collier Dock Co.*, 2 Rail. cases, 359; suit in equity for injunction to restrain directors from proceeding in action for calls. *Deposit and Life Assur. Co.* v. *Ayscough*, 6 E. & B. 761; *Irish Peat Co.* v. *Phillips*, 1 B. & S. 598.

2. Action for money received on ground of contract being void.—*Clarke* v. *Dickson*; 1 Ell. Bl. & Ell. 148.

3. Cases on *scire facias* by creditors against shareholders.—*Henderson* v. *Royal Brit. Bank*, 7 Ell. & B. 356; *Daniel* v. *Royal Brit. Bank*, 1 H. & R. 681.

4. Suits in equity by purchaser of shares against vendor requiring the latter to take back his share and repay the purchase money.—*Stainbank* v. *Fernley*, 9 Sim. 556, cited with approbation in *Burnes* v. *Pennell*, but qualified by explanations in *Deposit and Life Assur. Co.* v. *Ayscough*; *Pulsford* v. *Richards*, 17 Beav. 87; *Macbride* v. *Lindsay*, 9 Hare, 574.

5. Suits in equity to make company take back shares, on

of Malins, V.-C., in *Oakes* v. *Turquand* (*a*), having been affirmed by the House of Lords (*b*) after a most elaborate argument is a conclusive authority in favour of the proposition advanced in the former editions of this work—That a contributory in a winding-up under the Act of 1862, cannot plead the fact of his having been induced to take his shares by misrepresentation as a reason for his being struck off the list of contributories.

It was argued, with the assent of the Court, that on

ground of misrepresentations made to plaintiff.—*Seddon* v. *Connell*, 10 Sm. 58, decided on a technical point; and *Conybeare* v. *New Brunswick, &c., Land Co.*, 6 Jur. N. S. 518, reversed, but only on the ground of defective evidence, 9 H. L. C. 711.

6. Suits in equity to make Company take back shares on ground of misrepresentations made to plaintiff, and to others not parties to the suit.—*Pulsford* v. *Richards*, 17 Beav. 87; *Macbride* v. *Lindsay*, 9 Hare, 574.

7. Winding-up cases. Misrepresentations by Company.—*Brockwell's case*, 4 Drewry, 205; *Parbury's case*, 3 De G. & Sm. 43; *Bell's case*, 22 Beav. 35; *Nicol's case*, 3 De G. & J. 387; *Frowd's case*, 30 L. J. Ch. 322; *Ayre's case*, 25 Beav. 513; *Blake's case*, 34 Beav. 639; *Barrett's case*, 2 Dr. & Sm. 415, 3 De G. J. & S. 30.

With respect to the form of bill charging misrepresentation it is to be observed that fraud is a separate ground of complaint for every shareholder, and consequently a demurrer was allowed to a bill, charging the officers of a company with fraud, and filed by the plaintiff on behalf of himself and the other shareholders in the company, see *Croskey* v. *Bank of Wales*, 4 Giff. 314; 9 Jur. N. S. 595: but suit not dismissed on account of such misjoinder, *Hallows* v. *Fernie*, 3 Ch. 467.

(*a*) 3 Eq. 576.

(*b*) L. R., 2 H. L. 325.

agreement to take shares within the meaning of the 23rd section of the Act of 1862, although induced by fraud is, like all other agreements induced by fraud, not void but voidable, and that voidable meant in a case where third parties were concerned, valid until rescinded.

The question then arose whether the contributory could rescind it as against a creditor, and it was held that he could not, on the ground that the Act of 1862 gave the creditor a remedy against the individual shareholders by the process of winding-up, and intended to put the persons whose names were on the register in the same position towards creditors (subject to the statutable restrictions) as persons engaged in a partnership (*a*).

Where, however, before the commencement of the winding-up, a shareholder has filed a bill against the company, praying to be relieved of his shares on the ground of misrepresentation, he will (assuming, of course, his allegations to be established) be entitled to have his name removed from the list; although between the date of filing the bill and the decree of the Court upon it a winding-up order has been made (*b*).

(*a*) This case overrules the decision of the L.JJ. in *Ship's case* (2 De G. J. & S. 544), which was affirmed by the House of Lords (L. R., 3 H. L. 343), entirely on the special ground that the only appellant before them was a director, party to the misrepresenting prospectus.

Misrepresentations made by an individual vendor of shares are not a ground for removing the purchaser's name from the list of contributories any more than misrepresentations made by a company; *Langer's case*, 37 L. J. (Ch.) 292.

(*b*) *Reese River Mining Co.* v. *Smith*, L. R., 4 H. L. 64, affirm-

Shareholders who have parted with their shares.

Passing to the second class of objecting contributories, viz., those who admit that they once were shareholders, but contend that they did not sustain that character at the time when the company became insolvent.

It is obvious that, in the case of this class of objectors, the validity of the method by which they rid themselves of their shares always comes into question.

The cases arrange themselves under three heads:—

1. Cases where the shares have been purchased by the company.

2. Cases where the shares have been forfeited.

3. Cases where the shares have been purchased by

ing the order of the L.JJ., 2 Ch. 604. It appears to have been thought in *Oakes* v. *Turquand* (L. R., 2 H. L. 325), that this case was not well decided before the L.JJ.; but prior to the affirmation of their judgment by the House of Lords it was treated as an authority both in *Kent* v. *Freehold Land & Brickmaking Co.*, 3 Ch. 493, and in *Henderson* v. *Lacon*, 5 Eq. 249: and the material distinction between *Oakes* v. *Turquand* and this case—that in the latter the shareholder filed his bill without undue delay before the commencement of the winding-up, while in *Oakes* v. *Turquand* no such step was taken—is clearly pointed out by the Lord Chancellor and Lord Cairns. According to some of the *dicta* in the case now under consideration (see the judgment of Lord Westbury), a shareholder who filed his bill before the making of the winding-up order would be entitled to relief, but this has never been decided. See also *Fox's case*, 5 Eq. 118, where a shareholder, who being in a position to file a bill, wrote to the secretary declining to have anything more to do with the company, and received back his deposit, was held not to be a contributory. *Wright's case*, 7 Ch. 55.

third parties, but the transfer has not been completed, or has in some manner contravened the regulations of the company.

Purchase of shares by company

First, with respect to the purchase of shares. It appears that the purchase by a company of its own shares, without an express authority, is void (*a*).

Usually, however, the so-called purchases of shares by the company are merely compromises, by which the company agrees to relieve certain members from their shares, on their conferring some real or fancied benefit on the company.

Such transactions are not within the scope of an authority to purchase shares out of surplus moneys, or any similar power, which assumes the possession of a share to be a benefit and not a loss (*b*).

On the other hand, if a compromise be beneficial to the company, it will not necessarily be invalidated by the circumstance that it involves an obligation on the part of the company to take shares. At all events, it may be confirmed by the company in a general meeting duly summoned, and having full notice of all the particulars of the transaction (*c*).

(*a*) *London and Hamburg Bank*, 5 Ch. 444. In *Cockburn's case*, 4 De G. & Sm. 177, and *Bagge's case*, 13 Beav. 162, the company had power to purchase.

(*b*) *Morgan's case*, 1 M. & G. 225; *Lawes' case*, 1 De G., M. & G. 421.

(*c*) This appears to be the result of the authorities; see *Lawes' case*, ubi supra, *Bennett's case*, 5 De G., M. & G. 284; *Cockburn's case*, 4 De G. & Sm. 177; *Bagge's case*, 13 Beav. 162; *ex parte Jessop*, 2 De G. & J. 638; 5 Jur. N. S. 1; *Burt v. Brit. Nation Life Assur. Assocn.*, 4 De G. & J. 158; *Hodgkinson*

Moreover, if a company have a power to purchase shares, and exercise acts of ownership over shares when purchased, the formalities requisite to the purchase, for example, the consent of a general meeting, will, after a lapse of years, if there has been no concealment of the nature of the transaction, be presumed to have been properly given (*a*).

But, of course, directors cannot relieve a member from his shares by an arrangement not within their powers, and not confirmed by the company; and the Court will set aside a transfer of shares made to directors or officers of the company by a shareholder who took them with a view of aiding in getting up the company, and upon an understanding that he was not to be called upon to pay the deposit upon the whole of them (*b*).

Forfeiture of shares.

A forfeiture of shares, like a purchase of shares, has a double aspect (*c*). Sometimes it is exercised by the company against an unwilling shareholder; at other times it is resorted to by directors as a means of relieving themselves or particular shareholders from their liabilities.

v. *National Live Stock Insur. Society*, ib. 422, 5 Jur. N. S. 478, which does not contravene the former cases, as direct fraud was charged. *Preston* v. *Grand Collier Dock Co.*, 11 Sim. 327, is a peculiar case; *Mangles* v. *Preston Colliery Co.*, 2 Rail. Ca. 359.

(*a*) *Grady's case*, 1 De G., J. & S. 488; *Lane's case*, ib. 504.

(*b*) *Life Assurance Treasury Co.*, 6 L. T., N. S. 603.

(*c*) As to notice of forfeiture, *Van Dieman's Land Co.* v. *Cockerell*, 1 C. B., N. S. 732; *Graham* v. *Van Dieman's Land Co.* 1 H. & N. 541.

Viewed in the first light as a penalty. It appears that a company has no *inherent* right to forfeit shares on non-payment of calls, but on the contrary, that a specific power must be shown, and that power be strictly pursued or the forfeiture will be invalid, even though confirmed by a general meeting (*a*).

This supposes that the member whose shares are forfeited does not acquiesce in the forfeiture, for if he do, he will be barred by such acquiescence from claiming a restoration of his right, and would also seem to be free from any claims that may be made on him as a contributory (*b*).

A forfeiture or cancellation of shares by a board of directors, for the purpose of relieving one of their members from liability, is clearly invalid (*c*), as such a course is obviously not for the benefit of the company; but the case would seem to be otherwise if the forfeiture or release from liability form the condition or one of the conditions of a compromise, which is

(*a*) *Clarke* v. *Hart*, 6 De G., M. & G. 232, 6 H. L. C. 633; *Barton's case*, 4 Drew 535, 4 De G. & J. 46. Held valid in *Beresford's case*, 2 M. & G. 197; *ex parte Baily*, 15 Jur. 29; *Woollaston's case*, 4 De G. & J. 437; *Knight's case*, 2 Ch. 231; *Lyster's case*, 4 Eq. 232; *Kelk's case*, 9 Eq. 107. Forfeiture not completed, *Bigg's case*, 1 Eq. 309, observing on *Woollaston's case*, and on *Moore* v. *Rawlins*, 6 C. B., N. S. 310.

(*b*) See cases last cited. Held barred in *Prendergast* v. *Turton*, 1 Y. & C. C. C. 98; 13 L. J., Ch. 238.

(*c*) Cancellation of scrip, *ex parte Preece*, 15 Jur. 528; of shares, *Stanhope's case*, 3 De G. & Sm. 198, 14 Jur. 619; *Gower's case*, 6 Eq. 77.

beneficial to the company, and is approved by the company (*a*).

The question of the validity of an arrangement between directors and shareholders, for the purpose of relieving the latter of liability by the machinery of a forfeiture or surrender of their shares, was much considered in the cases arising under the winding-up of the *Agriculturist Cattle Insurance Company*. The result seems to be that such an arrangement, though *ultra vires* of the directors, may be rendered valid by the acquiescence of all the shareholders, and that such acquiescence may be presumed from the notoriety of the transaction, and the length of time during which it has remained unchallenged (*b*). On the other hand, the arrangement, if a private one, and not communicated to all the other shareholders, will, even after the lapse of years, be set aside (*c*). *Lord Belhaven's case* (*d*),

(*a*) *Jones's case*, 4 Jur. N. S. 448; *Richmond's case*, 4 Kay & J. 305; *Harris* v. *North Devon Rail. Co.*, 20 Beav. 384.

(*b*) This was the case of "the Chippenham compromise," *Brotherhood's case*, 31 Beav. 365, 4 De G., F. & J. 566. *Evans* v. *Smallcombe*, L. R., 3 H. L. 249. Compare *Stewart's case*, 1 Ch. 511, and *Houldsworth* v. *Evans*, L. R., 3 H. L. 263.

(*c*) *Spackman* v. *Evans*, L. R., 3 H. L. 171. It is difficult to state accurately the result of this case, as the difference of opinion respecting it was so great. The judgment of Lord Westbury, 11 Jur. N. S. 207, when the case was before him, should be carefully examined with those in the House of Lords. *Stanhope's case*, 1 Ch. 161, and two last cases in preceding note.

(*d*) 3 De G., J. & S. 41, *Dixon* v. *Evans*, L. R., 5 H. L. 606. See further as to surrender of shares, *Marshall* v. *Glamorgan Iron Co.*, 7 Eq. 129; *Snell's case*, 5 Ch. 22; *Addison's case*, ib. 294; *Hall's case*, ib. 707; *Adam's case*, 13 Eq. 474. A company may,

is plainly distinguishable from those already cited, since there was a *bonâ fide* dispute whether he was ever really a shareholder.

Transfer of shares impeached on ground of informality.

Thirdly. An attempt is frequently made to impeach transfers of shares made by former members to existing shareholders, on the ground that the formalities required by the regulations of the company were not complied with; for example, that the consent of the directors was not obtained, though required by the deed of settlement (*a*), or that the instrument of transfer was not formally executed (*b*).

Strangely enough, an objection of this character prevailed at law even against creditors (*c*), but in equity it is held, that where the regulations of the company prescribe certain formalities for executing a transfer of shares, yet, notwithstanding the omission of these formalities, a transfer may be held binding provided some act is done by the company, or on behalf of the company, by which the transfer is recognised and the transferee treated as a shareholder instead of the transferor (*d*).

by special resolution, so vary its articles as to give itself power to accept surrenders of old shares in exchange for new. *Teasdale's case*, 9 Ch. 55.

(*a*) *Walton's case*, 23 Beav. 480.

(*b*) *Maguire's case*, 3 De G. & S. 31.

(*c*) *Ness* v. *Angas*, 3 Exch. 805; *Nas* v. *Armstrong*, 4 Exch. 21; *Bosanquet* v. *Shortridge*, 4 Exch. 699. But see explanation of these cases, *Straffon's Executor's case*, 1 De G., M. & G. 576; *Electric Telegraph Co.* v. *Brown*, M. R., June 11th, 1860.

(*d*) *Largate* v. *Shortridge*, 5 H. L. C. 297; *Grady's case*, 1 De G., J. & S. 488; and especially *Lane's case*, ib. 504, 10 Jur. N. S. 25;

For instance, a transfer was held valid in *Mayhew's case* (*a*) where the transfer had been entered by the proper officer in the books of the company. In *Gordon's case* (*b*), where dividends on shares had been paid to the purchasers, and notice had been sent to them as shareholders. In *Maguire's case* (*c*), where the purchasers had been allowed to enjoy the rights and privileges of shareholders; and in *Watson* v. *Eales* (*d*), where the purchaser had been required by the company to pay calls on the transferred shares (*e*).

Cases, involving merely a violation of *forms*, will not, of course, be confounded with cases in which transfer of shares to the company has been held invalid on the ground of the directors having accepted such transfers in contravention of their powers. It is one thing to say that if directors do an act in excess of their powers, it is void; and another to declare that an act within the power of the directors is invalid, because the directors have neglected to comply with formalities which it was their duty to observe.

Spackman's case, 34 L. J., N. S. Ch. 321; *Lord Belhaven's case*, 3 De G., J. & S. 41; *Murray* v. *Bush*, L. R., 6 H. L. 37.

(*a*) 5 De G., M. & G. 837.

(*b*) 3 De G. & Sm. 249; *Hoare's case*, 2 J. & H. 229.

(*c*) 3 De G. & Sm. 31.

(*d*) 23 Beav. 294.

(*e*) Transfers invalid. *Chartres' case*, 1 De G. & Sm. 581; *Crosfield's case*, 2 De G., M. & G. 128; *Walton's case*, 23 Beav. 480; *Bunn's case*, 2 De G., F. & J. 275; and see further *Sanderson's case*, 3 De G. & Sm. 66, 3 H. L. C. 698; *Humby's case*, 5 Jur. N. S. 215; *Holmes' case*, 4 De G. & Sm. 312; *Sutton's case*, 3 De G. & Sm. 262.

Transfer of shares incomplete.

The Court will not rectify the register under s. 35 of the Companies Act 1862, by removing from the list of contributories the name of a transferor who has neglected to take steps to procure the registration of the transfer (*a*), nor will it do so where the transfer is required to be, but has never been, executed by the transferee (*b*).

But if the non-completion of the transfer has arisen from the default or unnecessary delay of the company within the meaning of s. 35, the transferor will be released, and the name of the transferee substituted (*c*).

Transfe of shares in in solvent com pan.

Where a company is threatened with insolvency, shares are not unfrequently transferred to men of straw for the purpose of getting rid of liability.

Such transfers are held void in the American courts, as being made for the purpose of defeating creditors (*d*). The English courts, on the other hand, have held that where the whole interest in the shares has been *bonâ fide* parted with, the transferor is not

(*a*) *Shepherd's case*, 2 Ch. 16; *Ward and Henry's case*, ib. 431; *Head's case*, 3 Eq. 84; *White's case*, ib. 86. "It is for the transferor to see that everything is complete," *per* James, V.-C., in *Gustard's case*, 8 Eq. 438.

(*b*) *Walker's case*, 2 Eq. 554; *Marino's case*, 2 Ch. 596; *Musgrave & Hart's case*, 5 Eq. 193. In *Heritage's case*, 9 Eq. 5, the transferee seems never to have accepted the shares.

(*c*) *Nation's case*, 3 Eq. 77; *Reed's case*, W. N. 1866, 114; *Hill's case*, W. N. 1867, 87; *Fyfe's case*, 4 Ch. 768; *Lowe's case*, 9 Eq. 589. Transferor retained where there had been laches on his part. *Walker's case*, 6 Eq. 30.

(*d*) Angell & Ames on Corporations, section 623.

liable as a contributory, although he knew at the time of making the transfer that the company was hopelessly insolvent, that the shares were worthless, and the transferee a man of straw, and may even have paid the transferee to take them (*a*).

If, however, directors have power to refuse to register a transfer which they do not approve, and they are deceived by the transferor as to the nature of the transaction, he will remain liable. It is to be assumed that, if they had not been deceived, they would have done their duty, and exercised their power of refusal in the interest of their shareholders (*b*).

It is needless to point out how wide a door is open to fraud by allowing shareholders to escape under such circumstances. To a certain extent the evil is cured by the Companies Act 1862, providing that shareholders are to remain liable for a certain period after they have transferred their shares. There are, however, many companies to which that Act does not

(*a*) *De Pass's case*, 4 De G. & J. 544; *Reeve's case*, 7 L. J., N. S. 267; *Weston's case*, 4 Ch. 20. Transfer with guarantee as to calls, *Harrison's case*, 6 Ch. 286; *Master's case*, 7 Ch. 292.

The transfers were held invalid in *Hyam's case*, 1 De G., F. & J. 75; *Hatton's case*, 8 Jur N.S. 380; *Costello's case*, 2 De G., F. & J. 302 (said by Turner, L.J., to lie between *De Pass's case* and *Hyam's case*), *Budd's case* (master to servant), ib. 279; and see *Parker, ex parte*, 2 Ch. 685; *Gilbert's case*, 5 Ch. 559; *Lund's case*, 27 Beav. 465, which would now perhaps be decided the other way. *Eyre's case*, 8 Jur. N. S. 1070 (collusive and informal transfer to nominee of director). *How's case*, W. N. 1872, 136, 162.

(*b*) *Kintrea's case*, 5 Ch. 95; *Payne's case*, 9 Eq. 223; *Snow's case*, 19 W. R. 1057.

apply, and even where it does apply, great embarrassment is caused to creditors by permitting a solvent shareholder to shelter himself, even for a time, behind an insolvent transferee (*a*).

Indemnity of transferor by transferee.

As between transferor and transferee, there is an implied contract on the part of the transferee to indemnify the transferor against all liability in respect of the shares during the time the transferee holds them; on the broad principle that he who takes the benefit must bear the burden (*b*). And where there are several persons on the B. list, subject to the same liability in respect of the same shares, and payment is demanded by the liquidator of any one of them, he is bound to pay, but may come on his immediate transferee, and say, "This is a liability which arose during the time you held the shares, though the call was not made till after you had parted with them. I have had to pay, and you must repay me" (*c*).

(*a*) With respect to companies within the Stannaries Act 1869, s. 35 of that Act expressly declares that a transfer for the purpose of getting rid of liability for a nominal or no consideration, or to a person without apparent ability to pay the expenses of working a mine, or to a person in the menial or domestic service of the transferor, shall be presumed to be fraudulent, and need not be recognised by the company or by the court on the winding-up.

(*b*) *Kellock* v. *Enthoven*, L. R., 9 Q. B. 241 (in the Exch. Chamber); *Roberts* v. *Crowe*, L. R., 7 C. P. 629; *Ex parte Nevill*, 6 Ch. 43; *Walker* v. *Bartlett*, 18 C. B. 845; 25 L. J., C. P. 263.

(*c*) *Kellock* v. *Enthoven* ubi supra.

Transmission of shares on death, bankruptcy, or marriage.

The above are the principal cases relating to original allottees and transferees of shares. Nothing, however, has yet been said as to the effect of the *transmission* of shares by the death, bankruptcy, or insolvency of a shareholder, or by the marriage of a female shareholder (*a*).

On the death of a shareholder, his estate will remain liable until his shares are duly transferred into the name of some other person (*b*). The mere fact of the executors receiving dividends will not amount to an acceptance of the shares by them (*c*), and it makes no difference that one of the executors is a beneficial residuary legatee, and receives the shares on his own account (*d*). Nay, more, an executor may have assented to a bequest of shares, yet if the name of the legatee be not entered on the books of the company, the estate of the testator will not be relieved (*e*). The liabilities attaching to shares are debts charged on the real estate under 3 & 4 Wm. IV., c. 104, and consequently the estate of the testator in the hands of his de-

(*a*) See provisions of the Companies Act 1862, ss. 76, 78, 99, 105.

(*b*) *Heward* v. *Wheatley*, 3 De G., M. & G. 628, 17 Jur. 403; *Hamer's Devisees' case*, 2 De G., M. & G. 366; *Baird's case*, 5 Ch. 725; *Turquand* v. *Kirby*, 4 Eq. 123.

(*c*) *Armstrong's case*, 1 De G. & S. 565; *Doyle's case*, 2 Hall & T. 221; *Gouthwaite's case*, 3 M. & G. 187. As to trustee *ex parte Hall*, 1 M. & G. 307; *Thomas's case*, 1 De G. & Sm. 579.

(*d*) *Crosfield's case*, 2 De G., M. & G. 128, a very strong case; *Bulmer's case*, 33 Beav. 435.

(*e*) *Keene's Executors' case*, 3 De G., M. & G. 272.

visees will be liable to make good any losses that may have been sustained since the death of the testator (*a*).

If executors purchase further shares after the death of their testator they will be held liable in respect of such shares (*b*), although the shares were taken by them in their representative character, and the directors had no power to offer them shares in any other character (*c*).

Assignees will not, of course, any more than executors, incur personal liability, unless they accept the shares themselves; and the cases quoted above, as to what constitutes acceptance of shares by executors, will apply to the case of assignees (*d*).

The husband of a female shareholder will be a contributory in respect of her shares, as being the person liable for her debts (*e*), although if she has a separate

(*a*) *Hamer's Devisees*, 2 De G., M. & G. 366; *Turquand* v. *Kirby*, 4 Eq. 123.

(*b*) *Spence's case*, 17 Beav. 203; *Sculthorpe* v. *Tipper*, 13 Eq. 232, where executors were held liable also for loss occasioned by their not disposing of shares within a reasonable time.

(*c*) *Fearnside and Dean's case*, 1 Ch. 231.

(*d*) *Kuper's Assignees*, 3 De G. & Sm. 113. See s. 77 of Act of 1862, and note.

(*e*) *Sadler's case*, 3 De G. & Sm. 36; *Burlinson's case*, *ib.* 18. *Ness* v. *Angas*, 3 Exch. 805, as explained by *Straffon's Executors' case*, 1 De G., M. & G. 576, is not an authority to the contrary. In like manner *Angas's case*, 1 De G. & Sm. 560, may be explained by observing, that in that case the married woman had been distinctly recognised as a shareholder by the company, and that the court, in proceeding under the Winding-up Acts of 1848 and 1849, to which creditors were not parties, thought

estate, and has contracted on the credit of it, her name will be added to the list in respect of such estate (*a*).

Trustees.

A trust cannot be recorded on the register of a company under the Act of 1862 (s. 30); and consequently, persons who consent to have shares registered in their names as trustees are contributories, though entitled to indemnity from their *cestui que trustent* (*b*).

General observations.

In considering the cases quoted in this chapter, it will be recollected that in a number of instances they were decided under the Winding-up Acts of 1848 and 1849, which did not admit of creditors intervening in the winding up. And consequently more weight has at times been given by the court to the acts of the shareholders amongst themselves, and to the regulations of the company, than would have been assigned to them if a winding-up had (as is the case under the Act of 1862) been the only mode

itself at liberty to pay greater regard to the dealings of the company with its shareholders than it can possibly be justified in doing in winding-up proceedings under the Act of 1862, which may not only be instituted by a creditor, but are the only mode in which he can compel contribution from the shareholders.

(*a*) *Luard's case*, 1 De G., F. & J. 533; *Mathewman's case*, Eq. 761.

(*b*) *Chapman and Barker's case*, 3 Eq. 361; *Oriental Com. Bank*, Ch. 791; see also *Davidson's case*, 3 De G. & Sm. 21; *Bugg's case*, 2 Dr. and Sm. 452, and *Hemming* v. *Maddick*, 7 Ch. 395. *Quære*, whether *S. Eastern R. Co.'s Claim*, 14 Eq. 10, is quite consistent with the above cases.

by which a creditor could extract contribution from the members of a company.

It cannot be urged against the precedents under the Acts of 1848 and 1849, that they were for the most part decided in the case of unincorporated companies, and therefore are not applicable to companies incorporated under the Act of 1862.

This would have been the case if the courts had taken into account the partnership relation towards creditors created by participation of profits. They, however, considered themselves as precluded, by the form of the statutes of 1848 and 1849, from entertaining that question, and regarded membership of the company, and not liability to creditors, as the test of a person's liability to be made a contributory (*a*).

The same standard is applicable to the list of contributories in companies regulated by the Act of 1862, for in the case of an incorporated company the company alone contracts debts; nobody, therefore, can be liable for such debts, except through the medium of a membership relation.

The precedents, therefore, under the former Acts may be fearlessly adopted as proving in all cases that a member within the provisions of the Winding-up Acts of 1848 and 1849 is also a member, and therefore a contributory of a company within the scope of the Act of 1862, though, as has been already remarked, it is possible that persons may have been

(*a*) *Ex parte Nicol*, 5 Jur. N. S. 205; 3 De G. & J. 387.

successful in shifting from their shoulders the burden of membership under the former Acts, who will have to bear it in the case of proceedings under the Act of 1862 (*a*).

(*a*) This observation must be so far qualified as to admit that under the Winding-up Acts of 1848 and 1849, a certain class of persons have been made contributories, not as members, but by reason of their having contracted to contribute to the debts of the company, who will not be contributories in companies regulated by the Act of 1862. See *Reaveley's case*, 1 De G. & Sm. 550; *Reid's case*, 24 Beav. 318; *Maxwell's case*, 24 Beav. 321. See note to section 74 of the Act of 1862, which contains a summary of the rules relating to contributories.

CHAPTER IV.

INCIDENTS OF AN INCORPORATE COMPANY.

Object of chapter.

THIS chapter proposes to treat of the legal incidents of an incorporate company under the following heads :—

1. Name of company.
2. Residence of company.
3. General meetings.
4. Powers of company.
5. Directors.
6. Form of contracts.

1. *Name of Company.*

First, with respect to the name.

Name of company.

Every incorporated company or trading corporation must have a name, by which it may sue and be sued, enter into contracts, make and receive grants, and perform all legal acts. Such a name is the "very being of its constitution, the knot of its combination" (*a*), and maintains the identity of the body though the members may be perpetually changing.

No alteration can be made in its name by the cor-

(*a*) Bac. Abr. tit. "Corporation."

porate body itself, except under the provisions of an Act of Parliament, as the effect of such an alteration would be to throw the title to shares into confusion, and to put difficulties in the way of creditors recovering their debts (*a*).

2. *Residence of Company.*

Residence of company.

A company resides in the place where its principal place of business is situate, and though consisting of foreign members, is subject to the law of the country by which it is created (*b*).

It may possess property in foreign countries, but it has no legal existence in such countries, unless it is recognised by the proper authorities, and when so recognised, it holds its property in subjection to the law of the country where the property lies, and not to the law of the country where the company resides.

Companies formed in United Kingdom for foreign undertakings.

This point is of great importance in forming companies in the United Kingdom for working mines, making railways, or carrying into effect any similar operation in foreign countries.

For example, if a company be established for making a railway in Brazil, it is competent for the Brazilian courts to apply Brazilian law, and not English law, to determine the liability of the company in

(*a*) *Sheffield, &c., Banking Co.*, 11 Jur. 1015. A power to change name is given by the Companies Act 1862, section 13; see also s. 20 and note as to identity of name, or resemblance of name calculated to deceive.

(*b*) *R.* v. *Arnaud*, 9 Q. B. 806.

respect of any contract entered into by them in that country (*a*).

If, therefore, it should happen that the Brazilian law does not recognise the limited liability of shareholders in a company, it might treat the company as an ordinary partnership, and declare the shareholders individually liable on the contract.

Such a declaration would be of little practical importance if the courts in this country refuse to recognise the validity of a foreign judgment, as it rarely happens that the English shareholder has any property abroad to satisfy the judgment. The better opinion, however, seems to be, that the judgment of a foreign court is, in the absence of fraud, *conclusive* evidence of a debt due from the person against whom the judgment is given (*b*).

Assuming this to be the case, the property of the English shareholder may readily be reached by the foreign creditor without the English shareholder having any opportunity of pleading the limited liability of the company to which he belongs.

In the supposed case, then, of a company formed for the purpose of making a railway in Brazil, a charter or other similar instrument should be obtained from the Brazilian Government, confirming the corporate character of the company.

(*a*) *Story's Conflict of Laws*, 320*a*.

(*b*) *Cammell* v. *Sewell*, 3 H. & N. 617, 4 Jur. N. S. 978; 6 Jur. N. S. 918; *Godard* v. *Gray*, L. R., 6 Q. B. 139; but see *Simpson* v. *Fogo*, 6 Jur. N. S. 949; *Castrique* v. *Imrie*, L. R., 4 H. L. 414.

Similarly, a company formed in England to deal with lands in Canada, requires the sanction of colonial as well as English law, before its members can be satisfied that its corporate status will be recognised in the colony.

3. *General Meetings* (*a*).

Corporations are bound by the acts of the majority, when those acts are conformable to the articles of the constitution (*b*).

Corporation governed by voice of majority.

This rule is founded on the law of nature, inasmuch as if unanimity were demanded it would be impossible for any corporation to will or act. Moreover, the concurrence of a majority of the whole corporation is not required, but only a concurrence of a majority of the number present at a regular corporate meeting, and in the absence of any provision to the contrary in the constitution of the corporation, the law will presume that any number, however small, is a quorum (*c*).

Usually, however, the constitution of the corporation provides that no business shall be transacted at a general meeting, unless a quorum, or certain specified

(*a*) The principles arranged under this head must be applied with caution to private trading corporations, as the books in which they are found had in contemplation for the most part only municipal or public corporations.

As to meetings and proceedings of Cost-book Companies, 32 & 33 Vict. c. 19, ss. 4—8.

(*b*) Angell and Ames on Corporations, p. 559.

(*c*) Bac. Abr. "Corporation," E. 7.

number of members, be present, and where such a provision exists, an act done by a meeting consisting of less than the required number will be illegal.

For example, a clause in a subscriber's agreement empowered the majority at any meeting of not less than five directors to bind the company, and it was held that a meeting of three could not bind the company, although the three were unanimous, and the other directors were summoned, and failed to attend (*a*).

Summoning corporate meeting.

The meeting of a corporation must be duly summoned (*b*) to make the acts of the majority binding on the minority, and, in the absence of any provision to the contrary, it would seem that personal notice must be given to every member (*c*).

As a general rule, where there is a *usual* method of notice, that cannot be dispensed with, though there be an actual summons of all the members, unless every single member be present at the meeting, and consent to waive it (*d*).

The summons must be issued by order of some one who has authority to summon the corporation, though the want of authority in such a case may be waived

(*a*) *Ex parte Morrison*, 11 Jur. 719; *Great West. Rail. Co.* v. *Rushout*, 5 De G. & S. 290.

(*b*) *Smyth* v *Darley*, 2 H. L. C. 789.

(*c*) *R.* v. *May*, 5 Burrows, 2681; *R.* v. *Co. of Fishermen of Faversham*, 8 T. R. 352.

(*d*) Bac. Abr., "Corporation," E. 8; but see the observations of V.-C. Wigram in *Foss* v. *Harbottle*, 2 Hare 461; *Brit. Sugar Refining Co.*, 3 K. & J. 408.

by the presence and consent of all those who have a right to vote (*a*).

Notice must be given in such reasonable time as to give all the members an opportunity of attending and voting; and consequently the ringing the bell fixed at the top of the Guildhall of the Corporation is not sufficient notice of an intention to hold an election (*b*).

The notice, as a general rule, should state the purpose for which the meeting is convened, but this is not universally necessary, for if the business be simply the routine business of the company, the members must know the cause for which they are summoned; and, therefore, a specific notice would be merely superfluous (*c*). Notice of an adjourned meeting is not, it seems, requisite—provided that due notice of the original meeting were given; but no new business can, without notice, be transacted at an adjourned meeting (*d*).

It has been before observed, that in the case of a company or indefinite body, any number of members, however small, when duly assembled, are, in the absence of any special provision, considered by law as constituting a quorum.

(*a*) *R.* v. *Hill*, 4 B. & C. 426; as to adjournment of meeting, *Kerr* v. *Wilkie*, 6 Jur. N. S. 383.

(*b*) *R.* v. *Hill*, 4 B. & C. 426; see also *R.* v. *Langhorn*, 4 A. & E. 538.

(*c*) Bac. Abr. "Corporation," E. 8; *R.* v. *Chetwynd*, 7 B. & C. 695; *R.* v. *Pulsford*, 8 B. & C. 350.

(*d*) *Wills* v. *Murray*, 4 Ex. 843, 862; *R.* v. *Grimshaw*, 10 Q. B. 747.

Distinction between acts to be done by an indefinite number, and by a definite number.

A distinction, however, is drawn between corporate acts to be done by an indefinite number of persons and those to be performed by a definite number. In the latter case no corporate meeting can be composed of less than the majority of such definite body (*a*).

For example, suppose the Grand Union Company to consist of 100 members, and one of the regulations of the company to be, that the affairs of the company are to be managed by nine directors, subject to the control of general meetings of the company; and suppose further, that no provision is made as to the quorum required to be present at a general meeting of the company, or of the directors. Under these circumstances, a general meeting of the company would be duly constituted, if three persons only attended, after a proper summons had been given; for as the company is an indefinite body, any number, however small, constitutes a meeting.

Not so with the definite body, the directors; in order to constitute a quorum, five members at least must be present, and a majority of those present must concur in any act.

This rule, if strained to its utmost extent, would prevent a definite body from acting when its members are reduced below a majority, and such is stated to be the rule in Bacon's "Abridgement;" but in the case of a railway company, the provisions of the Act with respect to the number of directors were held to be directory only, or, at all events, were considered to relate only to the internal management of the company, and

(*a*) Bac. Abr. "Corporation," E. 7.

not to be capable of being taken advantage of by a stranger (*a*).

Proxies.

In the absence of any provision allowing proxies, the better opinion would seem to be, that votes must be personally given (*b*), as the common law does not recognise the right to vote by proxy, except in the case of a peer of England voting in the House of Lords, where the right exists by virtue of a royal licence, which authorises a peer to be personally absent, and to appoint another lord of Parliament as his proxy (*c*).

Casting vote of chairman.

If the number of votes at a general meeting is equal, the chairman has no casting vote, by common right, but must support a claim thereto by charter or usage (*d*).

Poll.

A poll is the regular mode of popular election, as a show of hands is only a rude and imperfect declaration of the sentiments of the electors.

When the constitution of the company, therefore, is silent, the right to demand a poll would appear to be undisputed, and such a proceeding is, of course, essential, where the majority is to be ascertained by

(*a*) *Thames Dock and Rail. Co.* v. *Rose*, 3 Rail Ca. 177; *Gt. West. Rail. Co.* v. *Rushout*, 5 De G. & Sm. 290; *Howbeach Coal Co.* v. *Teague*, 5 H. & N. 151.

(*b*) Com. Dig. "Franchise," F. 11, 2; Kent Comm. 294; *Att.-G.* v. *Scott*, 1 Ves. sen. 412.

(*c*) May's Law and Practice of Parliament, ed. 6, p. 211. The practice of voting by proxy was discontinued by a resolution of the House in 1868, ib., p. 370.

(*d*) Ann. Lofft. 315; see contra, T. Smith's "The Parish," 60.

reference to value, or where different voters have an unequal number of votes (*a*).

Minutes.

Minutes of all resolutions and proceedings of general meetings and of the directors are required by s. 67 of the Act of 1862 to be duly kept (*b*).

4. *Powers of Company.*

Corporation cannot go beyond the objects for which it is formed.

A corporation is a creature of the law, formed and organised for the particular objects specified in its instrument of incorporation; and if it go beyond those objects, all its acts done in excess of them are void (*c*).

For example, if a railway company undertake to run its own steamboats in connection with its trains (*d*), a court of equity will grant an injunction against such an employment of the company's capital, at the suit of any single shareholder.

It may be, that the scheme is a very beneficial one, that a general meeting has given its assent, nay more, that every other member of the company is in favour

(*a*) *Anthony* v. *Seger*, 1 Hagg. Cons. Rep. 9; *R.* v. *Rector of Birmingham*, 7 Ad. & Ell. 254; *R.* v. *D'Oyley*, 12 Ad. & Ell. 139; *R.* v. *St. Mary, Lambeth*, 8 Ad. & Ell. 356; *Egham Burial Board*, 3 Jur. N. S. 956; *R.* v. *How*, 27 J. P. 773; and cases quoted; "there present" does not exclude poll.

(*b*) See as to minutes *Miles* v. *Bough*, 3 Q. B. 845. *Roney's case*, 10 Jur. N. S. 790, 812. *Knight's case*, 2 Ch. 321.

(*c*) Observations on company setting up defence that an agreement is in excess of their powers, *Hawkes* v. *E. Counties Rail. Co.*, 1 De G., M. & G. 737; *Mason* v. *Watkins*, 12 W. R. 735.

(*d*) *Colman* v. *E. Counties Rail. Co.*, 10 Beav. 1.

of the plan; still, the plaintiff has a right to say, *Non hæc in fœdera veni*, it is not within the powers of the corporation; I call on a court of equity to prohibit it; and I have a right to join the other shareholders as plaintiffs with myself, for the law will not permit them to assent to an illegal act" (*a*).

(*a*) For examples of suits by individual shareholders, see *Adley* v. *Whitstable Co.*, 17 Ves. jun. 315; *Ware* v. *Grand Junction Waterworks Co.*, 2 Russ. & M. 460; *Ward* v. *Society of Attornies*, 1 Coll. 370; *Vance* v. *E. Lancashire R. Co.*, 3 K. & J. 50.

Of suits by one or more shareholders on behalf of themselves and all other the shareholders in the corporation, except the defendants, *Colman* v. *E. Counties Rail. Co.*, 10 Beav. 1, *Simpson* v. *Denison*, 10 Hare, 51; and particularly in elucidation of the text, *Beman* v. *Rufford*, 1 Sim. N. S. 550, in which a resolution of the company had been passed, approving of an act complained of; and *Winch* v. *Birkenhead, &c. Rail. Co.*, 5 De G. & S. 562. All the cases on the subject are cited in *Efooks* v. *L. and S. W. Rail. Co.* 1 S. & G. 142; *Cooper* v. *Earl of Powis*, 3 De G. & S. 688; *Stupart* v. *Arrowsmith*, 2 Jur. N. S. 153; *Williams* v. *Salmond*, 2 K. & J. 463; *Charlton* v. *Newcastle, &c., Rail. Co.*, 5 Jur. N. S. 1096; *Clinch* v. *Financ. Corporation*, 5 Eq. 450, 4 Ch. 117; *Gray* v. *Lewis*, 8 Ch. 1035.

According to modern practice, a bill charging the directors with excess of powers is in the form of a suit on behalf of the plaintiff, and all other the shareholders except the defendant, it being considered the interest of all the shareholders to keep within the instrument of incorporation. But the presence of all the shareholders is not *necessary*. *Hoole* v. *G. W. Rail. Co.* 3 Ch. 262. See *White* v. *Carmarthen Rail. Co.*, H. & M. 786: otherwise in the case of misrepresentation, see note, p. 73. General observations on suits by one shareholder on behalf of others, *Thomas* v. *Hobler*, 4 De G., F. & J. 199.

A company may be *indicted* for violating any public right;

The right to interfere in such a case is very justly confined to members of the company. A rival company will not be allowed to maintain a bill against another company on the ground that its acts are beyond its powers, and injurious to the public (*a*). Nor will the Court grant an injunction where it appears that the plaintiff is merely a puppet in the hands of others, not shareholders in the company, who have undertaken to indemnify him against the costs of the suit (*b*).

In the earlier decisions, the objects of the company were measured by an absurdly rigid standard, and a discontented shareholder, aided by an enterprising

for example, by taking up streets without a licence to lay down pipes, although no real damage be done, *Reg.* v. *Langton Gas Co.*, 6 Jur. N. S. 601. In such case it would seem that the Attorney-General alone can obtain an injunction. *Ware v. Regent's Canal Co.*, 3 De G. & J. 212; see also *Att.-G.* v. *G. N. Rail. Co.*, 1 Dr. & Sm. 154.

Liability of company in actions of tort, see Obs. 10 Jur. N. S. 499, and cases cited there, namely, *Stevens* v. *Midland Rail. Co.*, 10 Ex. 352; *Lawson* v. *Bank of London*, 18 C. B. 84; *Green* v. *London General Omnibus Co.*, 7 C. B., N. S. 290; *Stiles* v. *Cardiff Navigation Co.*, 10 Jur. N. S. 1199. See also *Betts* v. *De Vitre*, 3 Ch. 441. *Moore* v. *Metrop. Ry. Co.*, L. R., 8 Q. B. 36. *Bayley* v. *Manchester, &c., R. Co.*, L. R., 8 C. P. 148.

(*a*) *Stockport W. Co.* v. *Manchester Co.*, 9 Jur. N. S. 266. As to suit by person becoming shareholder for purpose of instituting litigation, *Bloxam* v. *Metr. Rail. Co.*, 3 Ch. 337.

(*b*) *Filder* v. *London, Brighton, &c., Rail. Co.*, 1 H. & M. 489. Bill ordered to be taken off the file, *Robson* v. *Dodds*, 8 Eq. 301.

As to non interference of court, where the acts complained of are capable of being sanctioned by a majority of the company, *infra*, p. 114.

attorney, could often oppress a flourishing company by filing a bill suggesting that some act of the directors, though eminently beneficial to the company, was not within the objects contemplated by their constitution. A check has been put to this system by more recent decisions, in which it has been held, that where an act is conducive to the objects of a company, a court of equity will not interfere on the ground that it is not strictly within the letter of the company's constitution. For example, an hotel company at Westminster was allowed to let a large portion of the hotel to the India Board for temporary occupation (*a*), and a fire insurance company was not restrained from paying for losses occasioned by a distant explosion of gunpowder, although such payment was not within the terms of its policy (*b*).

Distinction between objects and powers of corporation.

Cases in which the company exceeds the objects of its incorporation are of rare occurrence, and cause little difficulty, as the line of demarcation is for the most part clearly defined, and any step taken beyond it is readily distinguishable.

Not so with respect to the powers of the company. Few questions have given rise to more litigation than

(*a*) *Simpson* v. *Westminster Palace Hotel Co.*, 2 De G., F. & J. 141; *Syers* v. *Brighton Brewery Co.*, 13 W. R. 220. On the other hand, preference shares were declared illegal, on the ground that no power to issue them had been given by the memorandum or articles of association, *Hutton* v. *Scarborough Hotel Co.*, 2 Dr. & Sm. 521, 11 Jur. N. S. 551.

(*b*) *Taunton* v. *Royal Insur. Co.*, 2 H. & M. 135. See, for a full exposition of the principles on which a court of equity interferes in cases not strictly within the instrument of foundation, *Gregory* v. *Patchett*, 33 Beav. 595.

those relating to the *powers* of a company, as contradistinguished from its *objects*.

Law relating to companies differs from law relating to partnerships.

This difficulty is much greater in the case of a corporation, than in that of a partnership.

No notice of deed of partnership.

The maxim of partnership law is, that no creditor has notice of a partnership deed. All he looks to is the business of the company, and if the act done fall within the scope of that business, he relies with confidence on the general law, that every partner is the accredited agent of his co-partners, having power to bind them in all matters relating to the partnership business. It is obvious that such a rule is for the convenience of trade, for what means has a creditor, in the hurry of business, of investigating the private relations of the partners with whom he deals? True it is, that he uses more caution if the act be doubtful; for example, if one partner proffer him a mortgage of the partnership property, in that case he inquires for his authority, or else suffers for his own imprudence.

Notice of instrument of incorporation of company.

Unfortunately a different rule prevails with respect to companies, and every person dealing with the company is held to have notice of its instrument of incorporation (*a*).

(*a*) *Royal Brit. Bank* v. *Turquand*, 6 Ell. & Bl. 327; *Ernest* v. *Nicholls*, 6 H. L. C. 401, and cases cited there; observations of Lord Justice Turner, in *State Insur. Co.*, 33 L. J., N. S. Ch. 123. As to constructive notice of deed of settlement, see *Marquis of Abercorn's case*, 2 De G., F. & J. 78.

A stranger, however, has a right to assume, as against the company (if he knows nothing to the contrary), that all matters of internal management have been duly complied with, *County Life Assur. Co.*, 5 Ch. 288.

The consequence of this rule is, that a creditor cannot deal safely with a company till he has inspected its instrument of incorporation, and ascertained that it expressly authorises the contract into which he is about to enter.

Acts in excess of powers of company void.

Practically, however, this course is never pursued, and instances are constantly occurring in which companies endeavour to repudiate their contracts, on the ground that they had not power to enter into them (*a*).

(*a*) The following cases may be consulted as instances in which companies have exceeded or been accused of exceeding their purposes or powers in relation to the several specified matters. Agreement with landowner, *Taylor* v. *Chichester, &c., Rail. Co.*, L. R., 2 Ex. 356, L. R. 4 H. L. 628. "Amalgamation," *Midland G. West. of Ireland Co.* v. *Leech*, 3 H. L. C. 872; *Charlton* v. *Newcastle, &c., Rail. Co.*, 5 Jur. N. S. 1096; *Harding* v. *Webster*, 6 Jur. N. S. 88; *Ex parte Williams*, 11 W. R. 204; *Ex parte Era Assur. Co.*, 2 Jo. & H. 408; *Woodhams* v. *Anglo-Australian Co.*, 12 W. R. 764, and see infra, p. 108. "Applying moneys wrongly," *Bagshaw* v. *Eastern Union Rail. Co.*, 2 Mac. & G. 389. "Capital improperly charged," *Bloxam* v. *Metrop. Rail. Co.*, 3 Ch. 337; and see *Hoole* v. *G. W. Rail. Co.*, 3 Ch. 262; *Mills* v. *Northn. Rail. of Buenos Ayres Co.*, 5 Ch. 621. "Change in nature of business," *Natusch* v. *Irving*, Gow. Part., App. 398; *Simpson* v. *Westminster Palace Hotel Co.*, 2 De G., F. & J. 141, 8 H. L. C. 712; *Att.-Gen.* v. *Gt. Northn. Rail. Co.*, 1 Dr. & S. 154. "Debentures," *Hulett's case*, 2 Jo. & H. 306. "Erection of bridge," *Mayor of Norwich* v. *Norfolk Rail. Co.*, 4 Ell. & Bl. 397. "Exchange of tolls," *Shrewsbury and Birm. Rail. Co.* v. *L. and N. W. Rail. Co.*, 7 Rail. Cas. 531, 6 H. L. C. 113. "Leasing," *E. Anglian Rail. Co.* v. *E. Counties Rail. Co.*, 7 Rail. Cas. 150; *Shrewsbury and Birm. Rail. Co.* v. *L. and N. W. Rail. Co.*, 2 Mac. & G. 324; *London, Brighton, &c. Rail. Co.* v. *London and S. W. Rail. Co.*, 4 De G. & J. 362; *Hattersley*

Power of company to borrow money.

The question most frequently agitated relates to the power of a company to borrow money, and is of so much importance that it may be considered separately.

It is clear that if the instrument of incorporation be silent, a trading company has an implied power to borrow money, and that if the nature of the business require it, they may bind themselves by promissory notes or bills (*a*).

v. *Shelburne*, 10 W. R. 881. "Making portion of line," *Cohen* v. *Wilkinson*, 1 Mac. & G. 481. "Making wharf," *Wilson* v. *Furness Rail. Co.*, 9 Eq. 28. "Payment for losses not strictly within policy," *Taunton* v. *Royal Insur. Co.*, 2 H. & M. 135. "Policy invalid," *Hamburg* v. *Hull, &c., Insur. Co.*, 3 H. & N. 789. "Prosecution of suit not instituted by company," *Kernaghan* v. *Williams*, 6 Eq. 228; *Pickering* v. *Stephenson*, 14 Eq. 322. "Sale of business," *Plate Glass Insur. Co.* v. *Simley*, 8 Ell. & Bl. 47; *Bird* v. *Bird's Sewage Co.*, 9 Ch. 358. "Selling scheme and parliamentary costs," *M'Gregor* v. *Dover and Deal Rail. Co.*, 12 Q. B. 618, 7 Rail. Cas. 227. "Steamboats and railway company," *S. W. Rail. Co.* v. *Redmond*, 10 C. B. 675; *Forrest* v. *Manchester, &c., Rail. Co.*, 30 Beav. 40. "Tolls," *Simpson* v. *Denison*, 10 Hare, 51. "Traffic," *Colman* v. *E. Counties Rail. Co.*, 10 Beav. 1. "Working line," *Beman* v. *Rufford*, 1 Sim., N. S. 550; *Winch* v. *Birkenhead, &c., Rail. Co.*, 5 De G. & Sm. 562.

A banking company may advance money on deposit of shares, and may do reasonable and proper acts in dealing with them, *Royal Bank of India's case*, 4 Ch. 252.

As to notice of illegality in dealings between two companies having common directors, *Credit Foncier of England*, 7 Ch. 161; and see *Ebbw Vale Co.* 8 Eq. 14.

(*a*) *Bank of Australasia* v. *Bank of Australia*, 12 Jur. 189; *W. Cornwall Rail. Co.* v. *Mowatt*, 12 Jur. 407; *Norwich Yarn Co.*, 22 Beav. 143; *Bryon* v. *Metrop. Saloon Omnibus Co.*, 3 De G. & J. 123; *Australian Clipper Co.* v. *Mounsey*, 4 K. & J. 733; *Morgan's case*, 1 Mac. & G. 225. These cases have in effect

So too a company may unless expressly prohibited borrow on mortgage of its property, and may give such security by deposit, and for a past as well as for a future debt (*a*). On the other hand, a company cannot safely issue preference shares without an express authority contained in their memorandum or articles of association (*b*).

How far this implied power is controlled by an express power is doubtful (*c*), and a different rule appears in some degree to apply to parliamentary companies, from that which applies to companies that are not created by the direct act of the legislature. In a parliamentary company it would seem that the company is restricted to the particular mode of borrowing prescribed by the act of parliament, while other companies may borrow money in such manner as they think most fitting.

The question of the nature and effect of instruments

overruled *Burmester* v. *Norris*, 6 Exch. 796. On the other hand, "mortgage held invalid," *De Winton* v. *Mayor of Brecon*, 26 Beav. 533; *Southampton Boat Co.* v. *Rawlings*, 12 W. R., 331; same v. *Moseley*, 12 W. R. 330. "Lloyd's bonds illegal unless debt actually existing," *Chambers* v. *Manchester, &c., Rail. Co.*, 5 B. & S. 588, and see *White* v. *Carmarthen Rail. Co.*, 1 H. & M. 786; *Cork and Youghal Rail. Co.*, 4 Ch. 748.

(*a*) *Patent File Co.*, 6 Ch. 83, and see *Gibbs and West's case*, 10 Eq. 312. Book debts not yet accrued due may be mortgaged under a general power to raise money on mortgage of the company's property, *Bloomer* v. *Union Coal Co.*, 16 Eq. 383.

(*b*) *Hutton* v. *Scarborough Hotel Co.*, 2 Dr. & S. 514.

(*c*) In the case of bye-laws, *Chilton* v. *London and Croydon Rail. Co.*, 16 M. & W. 212.

issued by a company, in pursuance of their borrowing powers, is discussed and the cases reviewed in *Imperial Land Co. of Marseilles* (*a*). In that case instruments described on their face as "debenture bonds," and stamped as bonds and expressing that the company bound themselves and their successors to pay to the bearer the principal sum of 20*l.* (the words as to interest being in similar form and there being no charge on the property of the company), were held to be either promissory notes or distinct promises to all the world that the company would pay to the order of the person named; and, consequently, holders for value were admitted to prove irrespective of equities (*b*).

Borrowing by directors.

A further power in relation to raising money is vested in directors, and therefore in the company, by the decisions establishing the rule that directors will be allowed advances of money, borrowed for the purpose of paying the wages of servants, and other debts incurred at the date of the advances, for the necessary purposes of the business of the company, although they would not be allowed moneys borrowed for the purpose of

(*a*) 11 Eq. 478.

(*b*) Compare *Natal Investment Co.*, 3 Ch. 355: see the judgment of Wood, L.J., in *Gen. Estates Co.*, ib. 758, and in addition to the cases cited by the V.-C. in *Imp. Land Co. of Marseilles*, see *Ex parte Chorley*, 11 Eq. 157; *Higgs* v. *Northern Assam Tea Co.*, L. R., 4 Exch. 387, and *Crouch* v. *Credit Foncier of England*, L. R., 8 Q. B. 374. As to overdrawn banking account, *Cefn. Cilcen. Mining Co.*, 7 Eq. 88; *Waterlow* v. *Sharp*, 8 Eq. 501. Meaning of "charging undertaking," *Panama, &c., Mail Co.*, 5 Ch. 318.

carrying on the business of the company, in cases where no debts had already been contracted (*a*).

This distinction certainly seems a narrow one, but it has been said that the directors are quasi trustees of the company, and inasmuch as they had employed the moneys borrowed by them for the purpose of enabling them duly to discharge their trust, they were entitled to the indemnity usually extended to trustees in such cases, and to be repaid their advances, notwithstanding there was no power of borrowing or advancing for the use of the company given to them by the deed of settlement (*b*).

(*a*) *German Mining Co.*, 4 De G., M. & G. 19; *Norwich Yarn Co.*, 22 Beav. 143, 167; *Troup's case*, 29 Beav. 353; and *Lowndes* v. *Garnett, &c., Mining Co.*, 8 Jur. N. S. 694; *Cork and Youghal Rail. Co.*, 4 Ch. 748; *Ex parte Williamson*, 5 Ch. 309, in which Lord Justice Giffard stated the principle of these cases to be that where the money borrowed has been applied in payment of debts which would be legally recoverable from the company, the lender may in equity stand in the place of the creditors whose debts have been so paid. See the observations of Mr. Lindley (On Partnership and Companies, 3rd edition, vol. i. p. 783).

A building society under 6 & 7 Will. 4, c. 32 (repealed by The Building Societies Act, 1874), has no power to borrow unless expressly authorised by its rules, *Ex parte Williamson*, 5 Ch. 309; the rules may give a limited power to borrow, *Laing* v. *Reed*, 5 Ch. 4; but not an unlimited power, *Hill's case*, 9 Eq. 605; *Professl., &c., Building Socy.*, 6 Ch. 856; *Davis' case*, 12 Eq. 516. See now s. 15 of the Building Societies Act, 1874, 37 & 38 Vict. c. 42.

(*b*) It may be doubted whether this is a correct definition of the relation borne by directors to the company. They would

Mortgage of calls.

A mortgage of the proceeds of a call already made or determined on is distinguishable from a mortgage generally of future calls, and is not invalid (*a*).

Amalgamation.

A word may also be said on the power of companies to "amalgamate"—a popular compendious expression for arrangements which vary indefinitely in their circumstances and legal consequences. It is clear, however, that directors cannot be advised to rely on the provisions frequently inserted in deeds of settlement and articles of association, which purport to authorise a transfer of business to and amalgamation with some other company, without any resort to the machinery provided by the Act of 1862 (*b*). True, if the shareholders are unanimous, amalgamation may be successfully effected, and no question raised. But, even where the regulations of the company authorise a transfer of assets, a recusant member cannot be forced against his consent to take shares in an undertaking which he never agreed to take, and the difficulty of dealing with such members (save by proceeding strictly

seem to be more correctly described as agents *of* the company, rather than trustees *for* the company. The distinction is of considerable importance, as the adoption of the one or the other analogy leads to very different practical results. See *Orr* v. *Glasgow, &c., Rail. Co.*, 6 Jur. N. S. 877; treated as special agents, *Chambers* v. *Manchester, &c., Rail. Co.*, 33 L. J., Q. B. 268; Infra, p. 119.

(*a*) *Stanley's case*, 4 D. J. & S. 407. *Sankey Brook Coal Co.*, 9 Eq. 721, ib. (No. 2) 10 Eq. 381. *Gibbs & West's case*, 10 Eq 312.

(*b*) See below, p. 188.

under the Act of 1862) is in practice almost insuperable (*a*).

Bye laws

A company has power to make bye-laws binding on all its members, so that such bye-laws are not inconsistent with the purposes of its incorporation, or the laws of the state by which it was created (*b*).

Distinction between excess of powers by company and excess of powers by directors.

In conclusion, it may be well to remark on the materiality of distinguishing cases in which the company goes beyond the limits of its powers, from cases in which the acts done are within the powers of the company, but beyond the powers of the directors. For example, a life insurance company issues fire policies; such policies are absolutely void, as being beyond the scope of the company's powers. On the other hand, suppose a company to have been originally constituted for the purpose of insuring lives, but to have reserved to itself a power to issue fire policies with the consent of a general meeting, and suppose the directors to issue fire policies without having obtained such consent. In this instance also the policies in their inchoate state are

(*a*) *Bagshaw's case*, 4 Eq. 341; *Kearns* v. *Leaf*, 1 H. & M. 681. *Bird* v. *Bird's Sewage Co.*, 3 Ch. 358. *Stace and Worth's case*, 4 Ch. 682. *Wynne's case*, 8 Ch. 1002. As to confirmation of invalid agreement *Campbell's case*, 9 Ch. 1, observing on *Bank of Hindustan* v. *Alison*, L. R., 6 C. P. 222.

As to amalgamation of Life Assurance Companies, see now 33 & 34 Vict., c. 61, ss. 14, 15.

(*b*) *Child* v. *Hudson's Bay Co.*, 2 P. Wm. 207; but it has been questioned whether a special power to make particular bye-laws does not take away the general power, *Chilton* v. *London and Croydon R. Co.*, 16 M. & W. 212. As to publication of bye-laws, *Motteram* v. *E. Counties R. Co.*, 6 Jur., N. S. 583.

void, but they differ from the former policies in that they are capable of being ratified by the company, and thus acquiring complete validity (*a*). The preceding observations refer to the first class of cases. Directors and their powers will be considered under the following heading :—

5. *Directors.*

Directors are agents of the company.

The directors are the agents of the company, and in order to ascertain the extent of their authority, it is necessary to consider the general law defining the relations of agents and principals.

General and particular agents.

Agents are of two classes, general agents and particular or special agents.

The general agent represents his principal in his whole business, or in some branch of his business, while a particular agent has only a limited authority, delegated to him for an express object.

The master of a ship is a general agent, and has authority to bind the owner in respect of all legal contracts. A still better illustration is found in the case of a partner, who, by virtue of his partnership, is a general agent of the partnership, and capable of binding the firm in all matters relating to its business.

An attorney empowered to bid for a particular estate, or a servant intrusted with a commission to buy a horse, supply familiar examples of particular agents.

The material distinction between a general agent and a particular agent is, that a general agent binds his

(*a*) Infra, p. 124.

principal in all matters within the scope of his agency, although he has exceeded his instructions; on the other hand, if a particular agent go beyond his powers, his principal may repudiate the contract, and leave the person injured by such repudiation to bring an action against the agent for misrepresenting his authority (*a*).

Examples.

Cases illustrating this distinction between general and particular agents are of daily occurrence.

A partner in a trading firm accepts bills of exchange contrary to the regulations of the articles of partnership; his co-partners in vain endeavour to repudiate his act, as the law holds the acceptance of the bills to be within the scope of the partnership business, and therefore within the scope of the general agency of the partner. On the other hand, a particular agent, an attorney, bids 20,000*l.* for an estate instead of 18,000*l.*, and the purchaser is left to his remedy against the agent, as soon as the principal has proved that the authority of the agent was restricted to making a bid of 18,000*l.*

The reasons of this difference are obvious; the business of mankind could not be carried on if a principal could hold out a person, for days or weeks, as an agent authorised to make contracts on his behalf, and then repudiate his contracts, on the ground of want of authority.

On the other hand, there is no injustice in compelling third parties to inquire into the authority of a person who claims for the first time to act on behalf of another.

(*a*) *Collen* v. *Wright*, 8 Ell. & Bl. 647, 4 Jur. N. S. 357; and see p. 116.

Application of agency law to companies.

Applying, then, these principles to companies, the first question is, whether directors are to be considered as general agents, deriving their authority from their appointment to the office, in the same manner as partners derive their authority from the fact of their being partners; or whether, on the contrary, they are particular agents, acting under instructions contained in the articles of association, or other instrument regulating the company.

This question in effect resolves itself into the inquiry, whether third parties can be considered as having notice of the regulations governing the company, or only, as in the case of partners, notice of the nature of the business carried on by the company; for notice of the regulations necessarily involves notice of the special authority conferred on the directors, and makes them merely particular agents; while if no notice be presumed of the regulations, the nature of the business of the company will be the measure of the authority of the directors, and all contracts within the scope of that authority will be binding on the company.

Directors particular agents.

Strangely enough, the principle of partnership law, declaring partners to be general agents, has been rejected in favour of the doctrine of particular agency. Third parties, as well as members of the company, are deemed to be acquainted with all the provisions of the instrument regulating the company, and any act of the directors, exceeding their limited authority, will be void, unless it is capable of being and be sanctioned by the company (*a*).

(*a*) *Royal Brit. Bank* v. *Turquand*, 6 Ell. & Bl. 327; *Ernest*

The only modification of this doctrine is to be found in the inclination of the courts to consider the provisions regulating the conduct of the directors as directory and not imperative, or, as it is sometimes expressed, to hold that third parties are obliged only to see that the *power* exists, not that it is executed in manner directed by the regulations of the company. Directory provisions.

For example, if the regulations empower the directors to borrow money with the consent of a general meeting, a lender must satisfy himself that the power to borrow exists, but the company cannot dispute the validity of a loan on the ground that no such meeting was held, and therefore that there was no authority in the directors to borrow (*a*).

Again, in a case in Chancery, a direction that

v. *Nicholls*, 6 H. L. C. 401. See observations on *Ernest* v. *Nicholls*, in *London Dock Co.* v. *Sinnot*, 8 Ell. & Bl. 374. *Pierce* v. *Jersey Waterworks Co.*, L. R., 5 Ex. 209. As to acquiescence of company, infra, p. 124.

(*a*) *Royal Brit. Bank* v. *Turquand*, 6 Ell. & Bl. 327; *Agar* v. *Athenæum Life Society*, 3 C. B., N. S. 725; *Prince of Wales Insur. Co.* v. *Harding*, Ell. Bl. & Ell. 183; *Athenæum Life Society*, 4 K. & J. 549; *Daniell* v. *Royal Brit. Bank*, 1 H. & N. 681; *Lane's case*, 1 De G., J. & Sm. 504; but see in equity, *Athenæum Life Society* v. *Pooley*, 3 De G. & J. 294, in which debentures of the same character as those in *Agar* v. *Athenæum Life Society* were held void in equity, in the hands of a *bonâ fide* purchaser. The decision in this case appears to have rested on the fact that things in action carry all their equities with them. Policy granted by de facto directors held valid, *County Life Assur. Co.*, 5 Ch. 288. *Ex parte Overend Gurney & Co.*, 4 Ch. 460, is an illustration of the same principles.

cheques should be signed by five directors, was held to be directory and not imperative, and accordingly, on winding up the company, the directors were allowed all sums drawn from the bank by cheques not properly signed, but *bonâ fide* applied to the purposes of the trade of the company (*a*).

On the other hand, in the case of *Balfour* v. *Ernest* (*b*), a bill of exchange was held invalid, even in the hands of a *bonâ fide* holder, on the ground that it was drawn for a purpose beyond the scope of the powers not of the directors only, but of the company (*c*).

Refusal of courts of equity to interfere in matters of internal regulation.

A court of equity will not interfere in the internal disputes of a company; a shareholder, therefore, cannot file a bill either on behalf of himself or of himself and others, to set aside, on the ground of its improvidence or inexpediency, an act of the directors sanctioned or *capable* of being sanctioned, by a majority; nay more, it would appear that he cannot be

(*a*) *Norwich Yarn Co.*, 22 Beav. 143. See also *Smith* v. *Hull Glass Co.*, 11 C. B. 897. *Bonelli's Telegraph Co.*, 12 Eq. 490. *D'Arcy* v. *Tamar R. Co.*, L. R., 2 Ex. 158; and compare *Wood's claim* and *Brown's claim*, 30 L. J., N. S., Ch. 373; *Ridley* v. *Plymouth Baking Co.*, 2 Exch. 711; *Balfour* v. *Ernest*, 5 C. B., N. S. 601: the two last-mentioned cases may be explained on the ground that the acts of the directors were beyond the scope of the business of the company, and not merely beyond the limited powers of the directors as agents. The observations also of the Lord Chancellor in *Greenwood's case*, 3 De G., M. & G. 459, deserve attention.

(*b*) 5 C. B. N. S. 601; *Scott* v. *Colburn*, 26 Beav. 276.

(*c*) It is to be observed also that in this case the holder of the note was by implication of law held to have notice of its illegality.

heard to object to any informality in the proceeding, unless he has attempted to put the company in motion, and the company has refused to take cognizance of the matter.

The question in such cases is, whether the company has power to do the act, and if it has, a court of equity closes its doors against the complainant, and will not, by an undue interference, enable a recusant minority to throw obstacles in the way of a majority carrying into effect any scheme of which it may approve (*a*).

It is not to be inferred from any of the preceding

Personal liability of

(*a*) *Foss* v. *Harbottle*, 2 Hare, 471; *Mozley* v. *Alston*, 1 Phil. 790; *Lord* v. *Co. of Copper Miners*, 2 Phil. 740; *Hodgkinson* v. *National Live Stock Insur. Co.*, 26 Beav. 473, 4 De G. & J., 422; *Orr* v. *Glasgow, &c. R. Co.*, 3 Mcq. 799. This salutary principle of non-interference was carried to its full extent in *Davidson* v. *Tullock*, 3 Mcq. 783, in which Lord Cranworth observed, "If there had been nothing alleged against the directors but that they had advanced money (even putting in the word 'fraudulently') for the benefit of persons with whom they or some of them were associated, and whom they wished to assist, I should have been very reluctant indeed to hold that that was not an act which the body at large might not have sanctioned; for in truth it amounts to no more than this—an improvident and improper advance of funds." Again, in *Gray* v. *Lewis*, 8 Ch. 1035, Lord Justice James said (p. 1051), "I think it is of the utmost importance to maintain the rule laid down in *Mozley* v. *Alston* and *Foss* v. *Harbottle*; to which, as I understand, the only exception is where the corporate body has got into the hands of directors and of the majority, which directors and majority are using their power for the purpose of doing something fraudulent against the minority, who are overwhelmed by them, as in *Atwool* v. *Merryweather* (5 Eq., 464, n.), where V. C. Wood, under those circum-

directors for unauthorized acts.

observations, that persons dealing with directors who exceed their authority are, by the escape of the company, left without a remedy.

Directors professing to enter into a contract on behalf of a company, impliedly warrant their authority; and if it turns out that they have no authority, although they are not bound *by the contract*, they will, on the principle of *Collen* v. *Wright* (*a*), be liable in damages for breach of the implied warranty (*b*).

On documents not excluding personal liability.

Similarly, a director signing a promissory note, with nothing in the note itself to exclude personal liability, will be personally liable on it. For a person signing a contract in his own name, without qualification, is *primâ facie* to be deemed to be contracting personally; and, in order to prevent his liability attaching, the document must show that he did not intend to bind himself as principal (*c*).

stances, sustained a bill by a shareholder on behalf of himself and others; and there it was after an attempt had been made to obtain a proper authority from the corporate body itself in public meeting assembled." See also the observations of the same learned judge in *Fox ex parte*, 6 Ch. pp. 185-6. *Menier* v. *Hooper's Telegraph Works*, 9 Ch. 350, a case resembling *Atwool* v. *Merryweather*.

(*a*) 8 E. & B. 647.

(*b*) *Richardson* v. *Williamson*, L. R., 6 Q. B. 276. *Weeks* v. *Propert*, L. R., 8 C. P. 427. But where there is no misrepresentation of fact, but merely a mistaken representation of law, the agent will not be liable. *Rashdall* v. *Ford*, 2 Eq. 750. *Beattie* v. *Lord Ebury*, 7 Ch. 778. Affirmed L. R., 7 H. L. 102.

(*c*) Notes to *Thomson* v. *Davenport*, 2 Smith, L. C., 6th edition, at p. 344. *Lindus* v. *Melrose*, 3 H. & N. 177. *Price* v. *Taylor*

It has been already seen that no doubt exists as to the personal liability, in an action on the case for deceit, of persons making false and fraudulent representations, whereby others are damnified (*a*). Nor is there any doubt as to the concurrent jurisdiction of courts of equity on a bill for indemnification (*b*).

For misrepresentations.

Such a proceeding is analogous to the common law action for deceit; and this being so, no delay short of

5 H. & N. 540. The mere affixing of the company's seal to a promissory note will not exclude the personal liability of the maker. *Dalton* v. *Marsh*, L. R., 6 Q. B. 361.

(*a*) *Gerhard* v. *Bates*, 2 Ell. & Bl. 476. Supra, pp. 29, 30.

(*b*) *Henderson* v. *Lacon*, 5 Eq. 249. *Peek* v. *Gurney*, 13 Eq. 79, L. R., 6 H. L. 377. The question of the liability of a person who makes or is party to an untrue representation which he does not know to be untrue, seems not to be quite clearly settled. See *Chandelor* v. *Lopus*, 1 Smith, L. C., 6th edition, p. 165, and notes there; and compare *Attwood* v. *Small*, 6 Cl. & Fin., 444, and the observations of V.-C. Wood, in *Henderson* v. *Lacon*, with those of Maule, J., in *Evans* v. *Edmons*, 13 C. B. 777, of the L.J.J. in *Rawlins* v. *Wickham*, 3 De G. & J., 304, and of Lord Cairns in *Reese River Mining Co.* v. *Smith*, L. R., 4 H. L. 64, though it may perhaps be said that his Lordship was only dealing with an application for rescission of the contract.

Stewart v. *Austin*, 3 Eq. 299 and *Ship* v. *Croskill*, 10 Eq. 73, were decided on the ground that mere excess of authority on the part of an agent does not constitute fraud.

Mere non-disclosure in a prospectus of material facts would seem to form no ground for an action in the nature of an action for misrepresentation, *Peek* v. *Gurney*, L. R., 6 H. L. 377, *per* Lord Cairns, at p. 403.

As to *criminal* liability of directors, and the criterion of criminal fraud, namely, *intention* or the *mens rea*, see *Reg.* v. *Gurney*, Finlason's Report, and especially pp. 215, 254; 24 & 25 Vict. c. 96, s. 84.

the period fixed by the Statute of Limitations will bar relief; and the maxim "*actio personalis*," &c., applies, so that executors of a deceased director cannot be made liable, unless his estate be alleged and proved to have benefited by the deceit (*a*).

But a person cannot complain of misrepresentations in a prospectus unless he directly connects himself with it; and a purchaser of shares in the open market is not so connected with the prospectus as to be entitled (like an original allottee) to any remedy against the directors or other persons who are parties to it. Otherwise they would be liable *ad infinitum* (*b*).

For breach of trust.

Directors are personally liable for a breach of trust in making an unauthorised investment (*c*); on the other hand, they will not be held liable in equity (whatever may be the remedy by action at law for negligence), for merely buying a *damnosa hereditas*, or making a rash and bad bargain within the scope of their powers; and a demurrer to a bill, not alleging fraud, but charging a breach of duty on the part of directors, and praying that they might

(*a*) *Peek* v. *Gurney*, L. R., 6 H. L. 377.

(*b*) *Peek* v. *Gurney*, ubi supra; and see *Barry* v. *Croskey*, 2 Joh. & H. 1.

(*c*) *Land Credit Co. of Ireland* v. *Lord Fermoy*, 8 Eq. 7, 5 Ch. 763; *Joint-Stock Discount Co.* v. *Brown*, 3 Eq. 139, 8 Eq. 381. The respective views of Lord Romilly and Lord Hatherly in the first of these cases, and in *Turquand* v. *Marshall*, 6 Eq. 112, 4 Ch. 376, as to the extent of directors' liability for each other's acts, deserve an attentive comparison. See also 8 Eq., at p. 401. *sqq.* As to defence of acquiescence of shareholders, *Turquand* v. *Marshall*, ubi supr.; *Pickering* v. *Stephenson*, 14 Eq., at p. 342.

be declared liable to indemnify the company, was allowed (*a*).

Notwithstanding the respect due to such *dicta* as those of Lord Cairns, in *Ferguson* v. *Wilson* (*b*), it may be questioned whether directors are accurately described as trustees. Trustees, indeed, in the full and proper sense of the word, they plainly are not: they can only be so styled by a species of metaphor (*c*). Moreover, Whether trustees.

(*a*) *Overend Gurney & Co.* v. *Gurney*, 4 Ch. 701, affirmed by the House of Lords, L. R., 5 H. L. 480. See further, *Evans* v. *Coventry*, 8 De G., M. & G. 835; *York, &c., R. Co.* v. *Hudson*, 16 Beav. 485; *Cramer* v. *Bird*, 6 Eq. 143 as to liability of directors of defunct company to account; *Madrid Bank* v. *Pelly*, 7 Eq. 443, directors decreed in suit by official liquidator to refund to company sums received by them out of promotion money paid by them to promoters; and in *General Exchange Bank* v. *Horner*, 9 Eq. 480, to refund sums improperly received on amalgamation. *Imp. Merc. Credit Association* v. *Coleman*, L. R., 6 H. L. 139, profit on contract not allowed to director.

(*b*) 2 Ch. 77. See too *Gt. Eastern R. Co.* v. *Turner*, 8 Ch. 149.

(*c*) See the judgment of Lord Westbury, dealing with the proposition that a surviving partner is a trustee for the representatives of the deceased partners, in *Knox* v. *Gye*, L. R., 5 H. L., p. 656, and in particular the observations at p. 676. . . . . "There is not a more fruitful source of error in law than the inaccurate use of language. The application to a man who is improperly and by metaphor only called a trustee, of all the consequences which would follow if he were a trustee by express declaration—in other words, a complete trustee, *holding the property* exclusively for the benefit of the *cestui que trust*—well illustrates the remark made by Lord Mansfield, that nothing in law is so apt to mislead as a metaphor." In the case of *Gt. Eastern R. Co.* v. *Turner*, the director was the legal owner of the stock in dispute, and the general proposition of Lord Selborne, that "directors are trustees of the company's money and pro-

it may reasonably be contended that the law of agency covers all the ground necessary to be covered in relation to the position of directors, whether as regards their personal liability for breach of duty or otherwise (*a*).

6. *Form of Contracts.*

Necessity of seal to contracts of company.

A person contracting with a company must not imagine that his security is complete, as soon as he has ascertained that the directors have power to enter into the contract; his next inquiry must be whether the seal of the company has been duly affixed to the instrument containing the terms of the contract, for if not, he may find, after having incurred considerable expense, that the company may repudiate its engagements, on the ground that corporations at common law can only contract by instruments under their common seal (*b*).

A notable example of the danger of relying on a contract not under seal occurred in the case of *Williams*

perty," cannot be taken to mean that they are "complete trustees" in the sense explained by Lord Westbury. It is indeed to be observed that the property of a company is not vested in the directors, and that, so far from their being allowed no beneficial interest therein (as in the ordinary case of trustee and *c. q. t.*), it is usually an indispensable qualification for office that they shall hold shares.

(*a*) See Story on Agency, c. viii. § 217, and the cases there cited, and an article in the "Law Magazine," N. S., No. vi., vol. iii., on "the legal position and liabilities of directors."

(*b*) Bacon Abr., "Corporation." Com. Dig. "Franchise," F. 13.

v. *Chester and Holyhead Rail. Co.* (*a*), in which the company repudiated a solemn contract entered into by the secretary of the company for furnishing boiler plates, on the ground that it was not executed in manner prescribed by Act of Parliament.

The observations of Baron Martin, in delivering the judgment of the court in that case, should constantly be borne in mind by all persons dealing with companies.

"We cannot conclude without calling attention to the extreme imprudence of persons dealing with railway or other companies upon letters or documents signed by the secretaries of such companies.

"There is no reason to suppose that any fraud was intended in this case, or that the mistake originated otherwise than in unintentional oversight. But the consequences to the plaintiff are the same as if the gross fraud had been practised upon him of the directors authorising one contract and their secretary knowingly communicating one varying from it to him. He not unnaturally supposed that the contract, as contained in the letters of the 15th and 19th October, was the contract of the company, but in consequence of this contract not being authorised by the resolution of the 29th July, which he most probably never saw, it was not binding upon the company, and he has failed in his suit upon it.

(*a*) 15 Jur. 829; see also *Cope* v. *Thames Haven Dock Co.*, 3 Exch. 841; *Finlay* v. *Bristol and Exeter Rail. Co.*, 7 Exch. 409; *Frend* v. *Dennett*, 4 Jur. N. S. 897. Seal affixed without due authority, *D'Arcy* v. *Tamar Rail. Co.*, L. R., 2 Ex. 158; compare *Ex parte Contract Corporation*, 3 Ch. 105.

"Persons dealing with those companies should always bear in mind that such companies are corporations, essentially different from trading partnerships, for all purposes of contracts, and especially in respect of evidence against them on legal trials; and should insist upon those contracts being by deed under the seal of the company, or signed by directors in the manner prescribed by the Act of Parliament. There is no safety or security for any one dealing with such bodies upon any other footing. The same observation also applies in respect of any variation or alteration in a contract which has been made."

Exceptions to rule that contract must be under seal.

Assuming, however, that the contract is not under the seal of the company, it will, nevertheless, be binding if it fall within any of the exceptions to the rule of the common law requiring a seal.

Trivial acts of company.

The first class of exceptions relate to trivial acts, such as hiring of servants or appointing a bailiff, with respect to which it is laid down, even in the earlier books, that the corporation may bind itself without a deed (*a*).

Promissory notes.

A second exception was also made from necessity, and it was held that the Bank of England, or any similar corporation, might, without deed, empower their servants to make promissory notes or bills of exchange in their name (*b*).

Contracts for purposes of trade.

The above exceptions availed little to relax the inconvenience and unjust stringency of the common law doctrine, but recent decisions have gone a long way in

(*a*) Bac.'s Abr. "Corporation."
(*b*) *Ibid.*

adapting the law to the requirement of the public, by holding that a trading corporation may make a binding contract not under seal, if it relates to matters necessarily incident to the purposes and objects for which the corporation was created.

Accordingly, when a company incorporated for the purpose of conveying mails passengers and cargo between Great Britain, the Cape of Good Hope, and Australia, and for that purpose to construct and maintain steam and other vessels, and to do all such matters as might be incidental to such undertaking, entered into a contract with plaintiff to go out to Sydney and bring home a ship belonging to the company which was unseaworthy; it was held that the plaintiff might maintain an action against the company on the contract, though not under seal (*a*).

A similar view was taken in *London Dock Co.* v. *Sinnot* (*b*), and the point was considered so completely settled at the time of the passing of the Companies Act 1862, that the Government was advised to direct the omission of the 41st section of the Act of 1856, which enacted that a company, like an individual,

(*a*) *Henderson* v. *Australian Navigation Co.*, 5 E. & B. 409, 1 Jur. N. S. 830.

(*b*) 8 Ell. & Bl. 347. The question of contracts by corporations, and all the material cases on the subject, are discussed in the *Mayor of Ludlow* v. *Charlton*, 6 M. & W. 821; the above cases of *Henderson* v. *Australian Navigation Co.* and *London Dock Co.* v. *Sinnot*, and in *S. of Ireland Colliery Co.* v. *Waddle*, L. R., 3 C. P. 463, 4 *ib.* 617. As to purchase of land and evidence of agency, see *Wilson* v. *W. Hartlepool R. V. Co.*, 2 De G., J. & S. 475.

should be bound by the acts of an agent, having its express or implied authority.

That the omission was unsafe is evidenced by the case of *Prince* v. *Prince* (*a*), and it was deemed desirable to restore the section in the Companies Act of 1867 (*b*).

Acquiescence.

When other means of supporting a contract have failed, an endeavour is sometimes made to show that the company is bound by acquiescence; and the attempt may be successful, if such acquiescence is meant, as involves the fact of the complete execution of the contract, and of the acceptance by the company of the benefit to be derived from its performance (*c*). On the other hand, it results from the very nature of the company that it cannot acquiesce in its corporate capacity, although the hardship of the case may be so great as to prevent a court of

(*a*) 1 Eq. 490.

(*b*) 30 & 31 Vict. c. 131, s. 37.

(*c*) The cases in favour of the doctrine of acquiescence on the part of a company are, *Gleadow* v. *Hull Glass Co.*, 15 Beav. 200; *Stuart* v. *L. and N. W. Rail. Co.*, 1 De G., M. & G. 721; *Richmond's case*, 4 K. & J. 305; and *Laird* v. *Birkenhead Rail. Co.*, 6 Jur. N. S. 140, a very strong case; *Magdalena Steam Navigation Co.*, 6 Jur. N. S. 975; *Ex parte Williams*, 11 W. R. 204; *Evans* v. *Smallcombe*, L. R., 3 H. L. 249; *Phosphate of Lime Co.* v. *Green*, L. R., 7 C. P. 43.

Against acquiescence, *Waring* v. *Manchester, &c., Rail. Co.*, 7 Hare, 482; *Att.-Gen.* v. *Briggs*, 1 Jur. N. S. 1084.

As to courts of equity not assisting contractor who has done work on faith of assurances by company's agents, there being no contract under seal, *Kirk* v. *Bromley Union*, 2 Phil. 640; *John-*

equity from assisting the company in repudiating a contract (*a*).

Since the earlier of the above cases were decided, the doctrine of corporate acquiescence has been clearly explained by Lord Westbury, in *Lane's case* (*b*). "Now I adhere entirely to the principle which was stated in *Grady's case*, and which is entirely consistent, not only with reason and good sense, but with the whole line of authorities, namely, that if a company has power to do a thing, and there is only required a particular formality, such as the consent of a general meeting, in order to warrant the exercise of that power, and if a company be found dealing with an individual at arm's length, taking a transfer of shares, duly completing the transfer, and entering the transaction in the books of the company, the Court is justified and warranted in imputing a knowledge of it to every shareholder, and also in inferring as against the com-

son v. *Mid. Gt. West. of Ireland Rail. Co.*, 6 H. L. C. 798; *Crampton* v. *Varna Rail. Co.*, 7 Ch. 562.

As to executed and executory contracts, Doe d. *Pennington* v. *Taniere*, 12 Q. B. 998.

As to non-interference of court of equity, on account of injustice that would be caused by interference, *Graham* v. *Birkenhead Co.*, 2 Mac. & G. 146.

As to lapse of time, *Hunt's case*, 32 Beav. 387; *Brotherhood's case*, 31 Beav. 365, 4 De G., F. & J. 566.

As to impossibility of company acquiescing, *Morgan's case*, 1 Mac. & G. 225; *Carlisle* v. *S. Eastern Rail. Co.*, 1 M. & G. 689.

(*a*) See note above, and in particular *Laird* v. *Birkenhead Rail. Co.*, 6 Jur. N. S. 140.

(*b*) 1 De G., J. & S. 504, 10 Jur. N. S. 25.

pany that the consent of the general meeting was given to the transaction."

General result of authorities.

The result of the above authorities relating to the powers of the company, and of the directors, and to the form of contracts, would appear to amount to this, that to insure complete safety, any person dealing with a corporation must be satisfied of the points following:—

1st. That the contract is within the scope of the company's powers.

2ndly. That the directors, or other agents engaged in making the contract, are duly authorised by the company; and,

Lastly, That the contract is under the seal of the company, or in such other form as may be prescribed by Act of Parliament (*a*); or if not, that the company is a trading corporation, and the contract relating to matters necessarily incident to the purposes for which the corporation was created.

Mandamus

It may be observed in conclusion, that in certain cases, a *mandamus* will issue to compel the fulfilment

(*a*) As to distinction between the proofs necessary when a contract is under seal, and when it is not under seal, though in a form authorised by Act of Parliament, see *Ridley* v. *Plymouth Baking Co.*, 2 Exch. 711.

It may be doubted how far that case is an authority, after the observations made by the Lord Chancellor in *Greenwood's case*, 3 De G., M. & G. 459, coupled with the above-mentioned decision of *Henderson* v. *Australian Navigation Co.*, 5 E. & B. 409; and *London Dock Co.* v. *Sinnot*, 8 Ell. & Bl. 347.

by a corporate body of a private duty (*a*), *e. g.* to pay a debt, for which judgment has been obtained against the public officer (*b*), to register a transfer of shares (*c*), to permit inspection of documents by a member (*d*).

(*a*) 17 & 18 Vict. c. 125 (Common Law Procedure Act, 1854), s. 68.

(*b*) *R.* v. *S. Katharine Dock Co.*, 4 B. & Ad. 360.

(*c*) *R.* v. *Londonderry, &c., Rail. Co.*, 13 Q. B. 998.

(*d*) *R.* v. *Saddlers' Co.*, 10 W. R. 87.

As to circumstances that will influence discretion of court, *R.* v. *Wilts, &c., Canal Co.*, 3 A. & E. 477; *R.* v. *Vict. Park Co.*, 1 Q. B. 288; *Bush* v. *Beavan*, 1 H. & C. 500.

PART II.

CHAPTER I.

FORMATION OF COMPANIES.

Object of first part of the Act. 25 & 26 Vict. c, 89

THE first part of the Companies Act, 1862, relates to the constitution and incorporation of companies and associations; and applies to companies and associations of all descriptions.

Companies of three descriptions may be formed under the Act. 1. A company limited by shares. 2. A company limited by guarantee. 3. An unlimited company.

The differences between those companies have been already alluded to (*a*), and will be fully explained in this chapter.

What description of limited company to be preferred.

It may be well to premise, at the outset, that the choice between the two descriptions of limited companies will depend on the following considerations:—

A company limited by shares is the same as an ordinary joint stock company, and will probably be preferred in all cases where the company has a capital divided into shares, and is intended to be brought out on the Stock Exchange, as the comparative novelty of

(*a*) Supra, pp. 18, 21-25.

a company limited by guarantee is likely to depreciate the marketable value of the shares.

On the other hand, every company that is supported by annual subscriptions, or is formed on the principle of mutual assurance, must necessarily, for the reasons already stated (*a*), assume the form of a company limited by guarantee, if it desire to acquire limited liability. Moreover, it is to be recollected that even in the case of a joint stock company, the guarantee form presents some advantages. It enables the company to deal with its capital as it likes, by diminishing the amount of its shares, or cancelling or repaying part of its capital; privileges denied to a company limited by shares, save under the stringent conditions imposed by the Act of 1867 (*b*).

Again, if the guarantee be large, that form of company is well adapted to secure a large amount of credit, as the guarantee constitutes a reserved fund for payment of the debts of the company.

Mode of forming a company limited by shares. 25 & 26 Vict. c. 89, s. 6.

The only statutory requirements for the formation of a company limited by shares are, that seven persons should subscribe a document, called a memorandum of association, and register it, when subscribed, in the joint stock companies office.

s. 8.

Every subscriber must take at least one share, and write opposite his name the number of shares he takes.

Memorandum of

There can be no difficulty in understanding the

(*a*) Supra, p. 23.

(*b*) 30 & 31 Vict., c. 139, ss. 9, 20.

association. 25 & 26 Vict. c. 89, s. 8, sch. 2, form A.

memorandum, as a form marked A. is given in the second schedule annexed to the Act of 1862, and sufficiently explains itself.

25 & 26 Vict. c. 89, s. 17, sch. 1, table B.

A small fee, proportioned to the nominal capital, is charged on registration, the amount of which may be learned by reference to Table B., in the 1st schedule of the Act.

Sch. 1, Table A.

To register in this simple mode, the promoters of the company must be satisfied with Table A. of the Act, which provides numerous rules for the internal regulation of the company; otherwise they must, at the time of registering the memorandum, register a code of regulations called in the Act "Articles of Association."

Articles of association. 25 & 26 Vict. c. 89, ss. 14, 15, 16.

These articles may contain any rules the promoters think proper to adopt, provided they do not infringe the provisions of the Act. In form, they must resemble Table A., and a fee of 5*s.* will be payable for registration.

Articles of association must be printed before being registered. They require the same stamp as a deed.

Such is a short summary of the creation of a company limited by shares; but success depends so much on the manner in which a company is formed, that it will be useful to go through, in detail, the various steps to be taken, pointing out the questions likely to arise, and the mode of solving them.

Observations on memorandum of association. 25 & 26 Vict.

Returning to Form A. in Sch. II. of the Act, the memorandum of association will be found to state the following particulars :—

(1.) The name of the proposed company. c. 89, s. 6, sch. 2, form A.

(2.) The part of the United Kingdom, whether England, Scotland, or Ireland, in which the registered office of the company is proposed to be situate.

(3.) The objects for which the proposed company is to be established.

(4.) A declaration that the liability of the members is limited.

(5.) The amount of capital with which the company proposes to be registered, divided into shares of a certain fixed amount.

Little need be said with respect to the name. It should be as short as possible, consistently with expressing generally the nature of the company, and must conclude with the word "Limited." Name.

The registered office fixes the domicile of a company. As a general rule, it should be established in the part of Great Britain or Ireland where the greater part of the business of the company is to be carried on. In the event of legal proceedings being taken, the situation is material, as it determines the jurisdiction, whether English, Scotch, or Irish, to which the company will be subject. Office.

The definition of the objects of the company requires particular attention. The language used should be sufficiently large to include every business to which the company is likely to apply its resources. For example:—If a company is formed with the immediate object of establishing steam communication between South America and Liverpool, it would be short-sighted to define the objects to be "trading in steam- Objects

ships between England and South America;" for if, at any future time, the company wish to trade from Liverpool to Australia, or elsewhere, the Court of Chancery would interpose by injunction, at the suit of any discontented shareholder, on the ground that the consent of every shareholder must be obtained before the objects of the company can be altered. The proper mode, therefore, of describing the objects of such a company would be, "trading in steam-ships between England and South America, and such other parts of the world as the company may from time to time determine," thus indicating the primary object of the company, without fettering its future operations.

The statement of the capital of the company and the amount of its shares is important.

Capital. If the company intend to conduct a business dependent in a great degree on credit—say banking or discounting bills—and be formed on the principle of limited liability, the nominal capital should be considerably greater than the immediate necessities of the company require; as the balance remaining uncalled will, if the shares are in the hands of substantial holders, be a sufficient security for the creditors. On the other hand, if the object of the company be to purchase a park, such as the Aston Hall estate at Birmingham, to make gas works, or to do any other work in which the current expenses will be small as compared with the cost of acquiring the property, the capital should be of adequate amount to make the proposed purchases, but need not leave a large reserve, as

there will be no difficulty in raising money on the security of the property.

Shares.

The amount of the shares will differ according to the nature of the company. If the objects of the company be popular, it may be advisable to make the shares of small amount, with the view of attracting numerous applicants. Shares of large amount cannot so easily be got rid of, but, when in good hands, afford great facilities for raising money, and are much to be preferred in companies conducting a business of a private nature, and involving a large expenditure. It is to be recollected that, in a company limited by shares, the amount of each share may be increased; but can only be diminished subject to the restrictions of the Act of 1867 (*a*). If it is intended to issue preference shares, provision for their issue should be made in the memorandum and articles of association, or in one of those documents (*b*).

s. 12.

Articles of association.

The memorandum of association fixes only the essential conditions of a company's existence. The mode of conducting business, the number and qualification of the directors, and generally the whole internal organization, are left to the determination of the company itself.

25 & 26 Vict. c. 89, s. 14.

In the case of a company limited by guarantee, or unlimited, articles of association *must* be filed, stating the amount of capital if the company have a capital divided into shares, and if the company have no such

(*a*) 30 & 31 Vict., c. 131, ss. 9—20.

(*b*) See page 105.

capital, the number of members with which it proposes to be registered.

Where a company is limited by shares, the registration or not of articles of association is left to the option of the company; if it prefer its own form, it files articles of association, containing such provisions as circumstances require; if no articles are filed, the Act intervenes, and declares that Table A. is to constitute the code of regulations for the company.

Observations on constitution of company.

The points to be especially attended to, in considering the constitution of a company, are treated in Table A. in the following order:—Shares; Calls on shares; Transfers of shares; Transmission of shares; Forfeiture of shares; Conversion of shares into stock; Increase in capital; General meetings; Proceedings at general meetings; Votes of members; Directors; Powers of directors; Disqualification of directors; Rotation of directors; Proceedings of directors; Dividends; Accounts; Audit; Notices. It will be convenient to adopt the same arrangement in the following pages.

Shares.

The first article of Table B. annexed to the Act of 1856, requiring a written acceptance of shares, is omitted in the Act of 1862; the reason of the omission is, that the requirement of a writing on the first allotment of shares gives rise to embarrassing questions with respect to what constitutes a written acceptance. On the other hand, when the shares are once allotted, the article is useless, as under the heading "Transfers of Shares," the instrument of transfer is required to be executed by the transferee as well as the transferor.

Table A. permits calls to be made at the discretion of the directors, but shareholders frequently prefer that an article should be inserted defining the intervals at which calls are to be made, and the amount of each call. A provision to that effect should invariably be added, if the prospectus has given any intimation that the calls will be made at stated times, and not be subject to the discretion of the directors. **Calls.**

The Act prohibits the entry of trusts on the register, in the case of companies registered in England and Ireland. Everything else is left to the regulations of the company, who may prohibit transfers altogether, make the consent of the directors or any other person essential to transfers, or leave the right of transfer unrestricted. Table A. leaves the right unrestricted; and this omission of any restriction probably suits the majority of companies; but whenever a company conducts business of a private character, or is very much dependent on credit, or for any other reason requires the maintenance of an unusually substantial list of shareholders, rather than facilities for bringing shares into the market, an unrestricted power of transferring shares may be very injurious. In such cases it is usual to provide that any shareholder desirous of transferring his shares shall submit the name of the transferee to the directors for approval. If they disapprove, the matter is referred to arbitration. On the other hand, if they approve or fail to testify their disapproval within a limited number of days, the transfer to the proposed transferee may be completed. **Transfers of shares. 25 & 26 Vict. c. 89, s. 30.**

The articles should always provide that, on the death **Transmission of shares.**

of a shareholder, his personal representatives should be the only persons recognised as having a title to his shares, and regulations similar to those of Table A. should be made with respect to the transmission of shares in the case of the bankruptcy or insolvency of a shareholder, or the marriage of a female shareholder.

s. 24. It should be borne in mind that the Act itself declares that a transfer of a share by the personal representative of a deceased shareholder shall be valid, without requiring the personal representative to be registered, while the transmission of shares in the case of the company being wound up, is settled by sections 76, 77, 78.

Forfeiture of shares. The articles of Table A., with respect to forfeiture may be rendered less stringent by the insertion of a power to redeem forfeited shares at any time before they are disposed of, on payment of the amount of calls due, and of all costs incurred.

Conversion of shares into stock. When shares are fully paid up, converting them into stock facilitates transfers, and to that extent is an advantage to the shareholders.

25 & 26 Vict. c. 89, ss. 12, 28, 29. The Act permits the conversion, where authorised by the regulations of the company, to be made on due notice being given to the registrar; and the articles of Table A. relating to conversion of shares into stock are introduced for the purpose of enabling the company by a resolution in general meeting to authorise the directors to make the conversion.

Increase of capital. Table A., An increase of capital affects so seriously the position of the shareholders, that the articles require the

sanction of a special resolution to be given to the issue of new shares. arts. 26, 27, 28.

A special resolution is defined by section 51 of the Act to be a resolution passed by a majority of three-fourths of the shareholders present at a general meeting, and confirmed by a majority present at a general meeting, held at an interval of not less than fourteen days, and not more than a month from the date of the previous meeting.

As in the Companies Clauses Consolidation Act, the new shares must be offered (first) to the existing members, and if declined by them, may be disposed of in such manner as the directors think most beneficial to the company.

The Act requires that a general meeting should be held once at least in every year, but lays down no other rule on the subject. General meetings. s. 49. Table A. arts. 29, 30.

The regulations of Table A. provide that the first general meeting shall be held within six months after registration, at such time and place as the directors may determine. Subsequent general meetings are to be held at such time and place as the company may determine, or, if the company prescribe no time, on the first Monday in February in every year.

Extraordinary meetings may be convened at any time, and must be convened on a requisition presented to the directors by one-fifth in number of the members of the company. Art. 32.

The quorum at general meetings depends on the number of the shareholders. If there are but ten shareholders, the quorum is five; if they exceed ten, Proceedings at general meetings. Art. 37.

one is added to the quorum for every five shareholders up to fifty, and one for every ten after fifty, with a limitation that the quorum is not in any case to exceed twenty.

Poll. Art. 42.

A poll is not to be taken unless five shareholders require it. In all other cases the chairman determines whether a resolution has been carried or not.

Votes of members.

The scale of votes is arranged on the model of the Companies Clauses Act; a shareholder has one vote for every share up to ten, an additional vote for every five shares up to 100, and an additional vote for every ten shares held by him beyond the first hundred.

Proxies. Arts. 48-51.

Proxies are allowed, but the instrument appointing a proxy must be deposited at the office of the company not less than seventy-two hours before the time appointed for holding the meeting at which the proxy is to be used (*a*).

Articles of Table A. likely to require alteration.

The greater part of the above regulations will be applicable to almost any joint stock company. The articles most likely to require alteration are those relating to the time of holding general meetings; the number of shareholders at whose instance the directors are compelled to convene extraordinary general meetings; the quorum at general meetings; and the number of votes assigned to each shareholder.

Time of holding general meetings.

In large companies, ordinary general meetings are held half-yearly; and a regulation to that effect must

(*a*) A proxy is legally available for one meeting only, 33 & 34 Vict. c. 99, s. 102 The words in brackets, Table A, Art. 51, "or at any meeting of the company that may be held in the year—" are introduced by mistake, and must be omitted.

always be introduced, when the declaration of a dividend depends on the approbation of a general meeting, and it is desired that dividends should be declared half-yearly.

In small companies it would seem better to vest in the directors a discretionary power to declare a dividend, and to hold only one ordinary meeting.

Extraordinary general meetings.

Regulations for the assembling of extraordinary general meetings should never be omitted; the absence of such a power would justify the shareholders in making repeated applications to the Board of Trade (under a provision to be hereafter noticed), for an official inspection of the accounts, as they might justly urge that the body of the shareholders were by such an omission excluded from expressing an opinion on the conduct of their directors, until the time had arrived for holding an ordinary meeting; a delay which might render any such expression of opinion useless.

In defining the number and qualification of the shareholders at whose instance an extraordinary general meeting is to be summoned, regard should be had to the size of the company. It is unwise to place the holding of extraordinary meetings within the reach of a few internal agitators, whilst, on the other hand, it is fair that a considerable minority should have the power of ascertaining the wishes of the company on any question of importance.

Quorum at general meetings.

The quorum necessary to constitute a general meeting should be fixed by the articles, as the rule laid down in Table A. is more complex than is desirable.

A quorum should not be fixed at too high a number, for so great is the supineness of members of large bodies, that if a numerous attendance be made necessary for the transaction of business, the company may find itself at a standstill from the mere inability to assemble a sufficient number of shareholders to take the steps required for keeping it in action.

Votes at general meetings.

The number of votes to be given to each shareholder is a question deserving great consideration.

When a company is formed by a small number of capitalists for the purpose of carrying on a particular business, and the greater part of the company is composed of clerks or others in the employ of the promoters, it is desirable to vest the powers in those holding the property. This is done either by giving a vote to each share, and thus making the holder of a great number of shares exercise a predominent influence over the company, or by creating two classes of shares, for example, 1000*l.* shares and 50*l.* shares, and giving the power of voting only to the 1000*l.* shareholders.

On the other hand, if the company be large, and its objects of a public nature, the rule of Table A. is more likely to be acceptable, and to conciliate shareholders.

Proxies.

The company may refuse to allow proxies, by making a regulation to that effect in their articles; but, as a general rule, proxies should be permitted, especially in cases where the shares are likely to be taken by persons resident at a distance from the domicile of the company, who would be practically disfranchised

if a personal attendance were made essential to the exercise of the right of voting.

The best form of government for a company is a problem which scarcely admits of a satisfactory solution. Table A. vests the power of appointing directors in the subscribers of the memorandum of association, and fixes the subscribers themselves with the responsibility of directors, till they have appointed substitutes.

General observations on government of company

It vacates the office of all the first directors at the first general meeting held after the registration of the company, and then provides that one-third of the Board shall retire every year.

This triennial rotation follows the model of the Companies Clauses Act, and works, perhaps, better than, or at least as well as, any other plan in large companies, such as water companies, gas companies, railway companies, or any other companies conducting a business that can be managed by general rules.

Suppose, however, the case of an hotel company, or a company carrying on a trade that requires constant superintendence and active management, and nothing can be more inefficient than a Board of directors: either they remain altogether inactive, and leave the whole business to a salaried manager, or else they interpose delays that are ruinous to success.

In such cases, the best scheme of government would seem to be to vest all the powers requisite for conducting the business in an individual manager, reserving only a control over the expenses to a committee of shareholders, and providing that any serious differences arising between them and the manager are to be settled

by appeal to a general meeting. The advantage of such a system is, that the committee of shareholders, by withholding their sanction to any proposed expenditure, act as a check on the manager, without fettering him in cases where immediate action is required.

Frequently a plan compounded of both the above systems is adopted. Directors are appointed with the usual powers, but one is named a managing director, and possesses a veto on the proceedings of the other directors. This plan works well, so long as matters go smoothly between the managing director and his co-directors, but if serious differences arise, the conflict of authority is ruinous to the company.

In truth, the whole difficulty that besets companies is caused by the impossibility of devising a good form of government. If all the power is centred in one person, his imprudence or dishonesty may ruin the company; on the other hand, if the machinery of a Board be adopted, either one member acquires a complete ascendancy, and then it ceases to be a Board, or else the business is done negligently. Indeed, if companies had not this difficulty to contend with, they would speedily overwhelm all private traders; but experience shows that the energy, activity, and undivided attention of a private trader are more than a match for the vast capital accumulated by a company.

Dividends. Arts. 72, 73, 76, 77.

The material provisions of Table A., relating to dividends, are these:—

1. The directors may, with the sanction of a general meeting, declare a dividend.
2. No dividend is to be payable except out of profits.

3. All dividends unclaimed for three years are to be forfeited.
4. No dividend is to bear interest as against the company.

The requirement of the sanction of a general meeting to the declaration of a dividend involves a company regulated by Table A. in one of two alternatives. Either a dividend must be declared once only in the year after holding the ordinary general meeting, as required by articles 29, 30, or else the directors must summon an extraordinary meeting for the purpose of sanctioning the declaration of a further dividend at the half year, or any other period.

In a small company, the best way would be to omit the words, "with the sanction of a general meeting," and insert in their place, "whenever they deem it expedient so to do."

In a large company, half-yearly general meetings should be held.

The prohibition against paying a dividend out of anything but profits, is inserted as a warning to the directors. As a matter of expediency, dividends ought, under no circumstances whatever, to come out of capital, and "it is a fraud in the directors, punishable perhaps criminally as well as civilly, to declare a dividend when no profits have been made, without expressly bringing under the attention of the shareholders the then state of affairs" (*a*).

The inconveniences of keeping long accounts with the shareholders are so great, that it is well to insert a

(*a*) *Burnes* v. *Pennell*, 2 H. L. C. 521.

condition that a dividend unclaimed for a certain number of years is to be forfeited. Three years seems a fair time, and is adopted by Table A.

A dividend probably would not carry interest as against the company, but in order to preclude all doubt, an express provision to that effect is inserted in Table A.

Accounts. Arts 78 97.

The articles of Table A. relating to accounts, audit of accounts, and notices, remain to be considered. They provide that true accounts shall be kept; that once at the least in every year, a statement of income and expenditure, calculated to show the exact balance of profit and loss during the current year, shall be laid before the company; and that in addition, a summary of the property and liabilities of the company shall be sent to every shareholder, and be submitted to a general meeting of the company (*a*).

Moreover, the accounts, statement, and balance-sheet are to be duly audited by auditors appointed by the company.

These regulations are so well calculated to exhibit to the shareholders an accurate view of the state of affairs, that courts of justice will probably look with suspicion on articles of association in which these or similar provisions are not introduced.

The only article which may in some cases be altered with advantage is the 78th, which provides that the

(*a*) The printing and sending to shareholders a report relating to the conduct of one of the officers of the company is *primâ facie* a privileged communication, *Lawless* v. *Anglo-Egyptian Cotton Co.*, L. R., 4 Q. B 262.

books of account shall be open to the inspection of the members, during the hours of business.

In banking companies, and other companies which conduct the private affairs of third persons, it may be desirable to provide that the accounts of customers are to be kept secret, and that the accounts of the company shall only be inspected under such conditions as may prevent a hostile shareholder from making use of the privilege for the purpose of injuring the credit of the company.

A word in conclusion on the best mode of adopting Table A. **Mode of adopting Table A.**

Suppose a company to be inclined to adopt a portion of Table A., and to reject a portion, the question immediately arises, whether it is advisable to incorporate by reference the adopted articles of Table A. or to set them out at large.

The answer is, that if the company be large and expense of comparatively little moment, the adopted articles should be fully set out, as the convenience of having the whole constitution of a company comprised in one instrument is great, and many difficulties of construction are avoided, which necessarily arise where two incomplete instruments are required in order to make a complete system of regulations.

The Act requires the articles of association to be printed, and copies to be forwarded to every shareholder at the maximum price of one shilling. In practice, every shareholder ought as a matter of course to be provided with these documents. **Ss. 16-19.**

If the form of a company limited by guarantee is **Mode of forming joint**

stock company limited by guarantee 23 & 26 Vict. c. 89, s. 9.

preferred by the promoters of a joint stock company, they must procure seven persons to subscribe a memorandum containing the following things :—

(1.) The name of the proposed company, with the addition of the word "Limited" as the last word in such name.

(2.) The part of the United Kingdom, whether England, Scotland, or Ireland, in which the registered office of the company is proposed to be situated.

(3.) The objects for which the proposed company is to be established.

(4.) A declaration that each member undertakes to contribute to the assets of the company, in the event of the same being wound up during the time that he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before the time at which he ceases to be a member, and of the costs, charges, and expenses of winding up the company, and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required, not exceeding a specified amount.

The same persons must also subscribe articles of association, stating the amount of capital with which the company proposes to be registered, and binding each subscriber to take the number of shares (in no case less than one), set opposite his name in the articles.

Amount of guarantee.

In forming a joint-stock company of this descrip-

tion, the great question is the amount to be fixed as the sum which each member guarantees to pay in the event of the company being wound up.

This amount will be in addition to any sums unpaid on the shares held by him, as the 90th section provides that in the event of any company limited by guarantee being wound up, any share capital that may not have been called up is to be deemed assets of the company, and be a specialty debt due from each member, and payable at such time as may be appointed by the court.

For example, if the guarantee be 100*l.*, the shares 10*l.*, and the amount not called up 5*l.*; each member will be liable to contribute to the assets of the company, in the event of its being wound up, 5*l.* on each share held by him, in addition to his 100*l.* guarantee.

In estimating the amount of guarantee, it may be stated at once that a small guarantee, in the case of a joint stock company, cannot fail to discredit the company, as no reason can be assigned for adopting the guarantee form of company, except the wish to provide a large reserve fund for the creditor. If the shares were intended to form the only available fund for payment of the company's debts, it would have been better to bring out the company as one limited by shares, rather than to put on the appearance of a guarantee without its reality. In every case then of a joint stock company limited by guarantee, the amount of guarantee should be substantial, say from 50*l.* to 100*l.*

This is the only point that requires special notice, as

the reasons for adopting that form of company have been stated above, and the remarks on the articles of association will apply as well to a joint stock company limited by guarantee, as to one limited by shares.

The above observations with respect to the amount of guarantee do not apply to mutual insurance companies, mutual land companies, and other mutual companies that possess no capital, and deal only with their members. In such associations the members practically are the sole creditors, and any amount of guarantee that is not illusory, and would probably suffice for the expense of winding up the company, for example, a guarantee of from 5*s.* to 1*l.*, would seem to be sufficient.

Articles of association must be filed in the case of a company limited by guarantee, and formed on the mutual principle. Instead of the amount of capital, the articles must state the number of members with which the company proposes to be registered.

Mode of forming unlimited companies.

Unlimited companies may readily be formed by attention to section 10 of the Act, and to form D in schedule 2.

No special directions are required with respect to the articles of association of companies limited by guarantee and unlimited companies, as the observations made above apply to the articles of such companies, no less than to the articles of companies limited by shares.

Registration of company.

The next step, after completing the memorandum

and articles of association, is to register the company. To this end the memorandum of association, and articles of association, if any, must be stamped with the same stamp as if they were deeds, and be presented to the registrar of joint stock companies, who will retain the originals, and grant a certificate of incorporation, which is the regular evidence of the company having attained a corporate existence.

Two sections in part I. of the Act remain to be noticed.

Prohibition of identity of name. S. 20.

Section 20 enacts that no company shall be registered under a name identical with that by which a subsisting company is already registered, or so nearly resembling the same as to be calculated to deceive, except in a case where such subsisting company is in the course of being dissolved, and testifies its consent in such manner as the registrar requires.

The appropriation of the name of another company is an offence of the same character as piracy of a trade-mark, and is justly prohibited.

The exception is useful in the not unfrequent case of two or more companies amalgamating. The process consists in a new company registering itself for the purpose of absorbing the old companies, which wind up voluntarily. The new company usually assumes a name made up of the names of the companies to be absorbed, or otherwise resembling them, in a greater or less degree. This assumption of name is not illegal, if the dissolving companies testify their assent to such a use of their names.

Prohibition of the holding of land by religious and charitable societies. S. 21.

It will be recollected, that the Act enables companies formed for purposes of charity, or any lawful purpose whatever, though gain be not the object, to incorporate themselves under the Act, and to hold land: it was feared that this power of holding land might be abused in the case of religious societies; section 21 therefore enacts, that no company formed for the purpose of promoting art, science, religion, charity, or any other like object, shall be entitled, without the license of the Board of Trade, to hold more than two acres of land (*a*).

(*a*) For form of license see Form F in Schedule II.

CHAPTER II.

DISTRIBUTION OF CAPITAL AND LIABILITY OF MEMBERS OF COMPANIES AND ASSOCIATIONS UNDER THE ACT.

A MEMBER of a company is virtually a person who has agreed to become a member; for although his legal title is not complete until he is registered, ample powers are given by the Act to place his name on the register, whether he is willing or not to adhere to his engagement. Membership in a company. s. 23.

No question can arise as to the nature of the interest of a member, as the 22nd section declares that such interest shall be personal estate, capable of being transferred in manner provided by the regulations of the company, and shall not be of the nature of real estate. S. 22.

The register of members has a twofold importance: first, it ascertains the rights and liabilities between themselves, of the persons claiming interest in the company; secondly, it provides the creditor with the best data he can obtain of the solvency or insolvency of the body with which he proposes to deal. Importance of register of the members.

Both these objects have been kept in view by the Act.

The 25th section provides that every company shall S. 25.

keep in one or more books a register of its members, and there shall be entered therein the following particulars :—

1. The names and addresses, and the occupations, if any, of the members of the company, with the addition, in the case of a company having a capital divided into shares, of a statement of the shares held by each member, distinguishing each share by its number; and of the amount paid or agreed to be considered as paid on the shares of each member.
2. The date at which the name of any person was entered in the register as a member.
3. The date at which any person ceased to be a member.

In a large company the above list would extend over many books, and from its very size would tend to confuse rather than afford useful information to an inexperienced person. The next section therefore requires that in the case of a company having a capital divided into shares, an annual list shall be made of all persons holding shares in the company on the 14th day succeeding the day on which the ordinary general meeting of the company, or if there be more than one ordinary general meeting, the first of such meetings is held: and that such list shall contain a summary specifying the following particulars :—

S 26.

1. The amount of the capital of the company, and the number of shares into which it is divided.
2. The number of shares taken from the com-

mencement of the company up to the date of the summary.

3. The amount of calls made on each share.
4. The total amount of calls received.
5. The total amount of calls unpaid.
6. The total amount of shares forfeited.
7. The names, addresses, and occupations of the persons who have ceased to be members since the last list was made, and the number of shares held by each of them.

The above list and summary must be contained in a separate part of the register and be completed within seven days after the above-mentioned fourteenth day, and a copy be forthwith forwarded to the registrar of joint stock companies.

Any omission to conform with the regulations of the Act respecting the list and summary is visited on the company with a penalty of 5*l.* a day, and in addition to the corporate penalty every director or manager of the company who knowingly and wilfully authorises or permits such omission, incurs a like penalty. S. 27.

It will be observed that the above regulations apply only to companies having a capital divided into shares. To send a list of its members would lead to great expense, in the case of a mutual company, having perhaps some thousand or two thousand subscribers. Such a company does not, however, escape altogether, as it is required by section 45, to keep at its office a register containing the names and addresses of its directors, to send a copy to the registrar, and notify

to him every change that takes place in the board of directors.

Inspection of register. s. 33.

Any omission in the register is likely to challenge attention, as the Act requires that it shall be open to the inspection of each member for at least two hours each day, gratis, and to the inspection of any creditor or other person on payment of a maximum sum of one shilling. Copies of the register must be supplied at the rate of sixpence for every hundred words, thus placing it in the power of any person whatever to obtain the most accurate information as to the constitution of the company.

Rectification of register s. 35.

The correctness of the register of members is so essential to the well-being of a company that the Act provides a summary mode of rectification.

By the 35th section, if the name of any person is, without sufficient cause, entered in or omitted from the register of members, or if default is made, or unnecessary delay takes place in entering on the register the fact of any person having ceased to be a member, the person or member aggrieved, or any other member, or the company itself, may, by motion in one of Her Majesty's superior courts, or by application to a judge sitting in chambers, apply for an order that the register may be rectified.

Full power is given to the court to make any order required, and to award costs, and if necessary damages, to the party aggrieved.

To preclude the court declining to exercise its jurisdiction without a more formal proceeding than an application by motion or in chambers, it is

provided that the court may, in any proceeding under the section, decide all questions that may arise between any persons whatever, the decision of which is necessary to the rectification of the register (*a*).

Moreover, if the application be made to a court of common law, it may direct an issue to be tried, in which any question of law may be raised; and a writ of error or appeal lies from the decision of the court.

Register to be evidence S. 37.

The register is *primâ facie* evidence of any matters directed to be inserted therein by the Act; in other words, every person registered as a member will be presumed to be so without further proof, and the burden lies on him of showing that he is not a member, by proving either that he never legally became one, or that he has legally ceased to be one.

Liability of members. S. 38.

This part concludes with the definition of the liability of members, which may be shortly stated as follows:—

Every member is liable during the time of his membership, and for a year after in respect of engagements contracted before the time that he ceased to be a member, but not in respect of subsequent engagements.

In a company limited by shares, his liability ceases when he has paid up all calls on his shares. In a company limited by guarantee, the extent of his liability is measured by the amount of the guarantee, with the addition, if the company be a company

(*a*) See note to the section.

having a capital divided into shares, of an obligation to pay up the calls on his shares.

Ss. 90, 134. A member of an unlimited company may in an extreme case be compelled to contribute his whole fortune to liquidate the debts of the company. His only safeguard is, that he cannot, as formerly, be singled out from the body of members, and be alone exposed to the persecution of the creditors. Under the Act of 1862, the calls must be made equally on all the shareholders, and all must to the extent of their means contribute rateably to the assets of the company.

Important concessions are made in favour of members who have ceased to have their names on the register, though the year of their continuing liability has not expired, as it is enacted by sub-section (2) of s. 38, that no past member shall be liable to contribute in respect of any debt or liability of the company contracted after the time at which he ceased to be a member; and by sub-section (3), that no past member shall be liable to contribute to the assets of the company, unless it appears to the Court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of the Act (*a*).

Practically then a member, when he has once *legally* rid himself of his shares, or of his interest in a company, may deem himself tolerably safe from a liability to

(*a*) For the construction that has been put on the provisions of s. 38 relating to past members, see note to that section.

contribution; the danger is, that in his haste to escape from being involved in the crash of a falling company, he may have failed to make such a transfer of his interest as will satisfy the requirements of the law (*a*).

The list of present members liable to contribute is known in practice as the A. list; the list of past members liable to contribute as the B. list.

(*a*) See above, Part I., Chapter III., p. 75, s. 99.

CHAPTER III.

MANAGEMENT AND ADMINISTRATION OF COMPANIES AND ASSOCIATIONS UNDER THE ACT.

Object of the third part of the Act. 25 & 26 Vict c. 89, part 3.

In this part of the Act are found the only administrative provisions that are obligatory on companies. They are few in number, and may be conveniently divided into provisions for the benefit of creditors, and provisions for the benefit of shareholders.

Provisions for benefit of creditors.

The provisions for the benefit of the creditor are as follows:—

Registered office of company.

Section 39 requires the company to keep a registered office, to which all communications may be sent and notices addressed, and imposes on the company a penalty of 5*l.* a day if it carries on business before it has complied with the provisions with respect to a registered office.

Section 40 enacts that due notice of the situation of the office is to be given to the registrar.

A form of notice is given in the Appendix, and any officer of the company will justly incur great blame who, by neglecting to give due notice, subjects the company to which he belongs to payment of the penalty.

The next two sections relate only to limited com-

panies, and they should never be absent from the mind of any director or officer of such a company.

Publication of name by limited company. S. 41.

They provide for the publication to the world of the fact of a company being framed with limited liability, by enacting that every limited company shall paint or affix, and shall keep painted or affixed, its name on the outside of every office or place in which the business of the company is carried on, in a conspicuous position, in letters easily legible; and shall have its name engraven in legible characters on its seal; and shall have its name mentioned in legible characters in all notices, advertisements, and other official publications of such company, and in all bills of exchange, promissory notes, endorsements, cheques, and orders for money or goods purporting to be signed by or on behalf of such company, and in all bills of parcels, invoices, receipts, and letters of credit of the company.

Penalty on non-publication of name. S. 42

The penalty for non-compliance with the above provision is most serious. A limited company which does not paint or affix, and keep painted or affixed, its name in manner directed by the Act, is liable to a penalty of 5*l.*, and to a further penalty of 5*l.* for every day of default; and every director and manager who knowingly and wilfully authorises or permits such default is liable to the like penalty: and if any director, manager, or officer of the company, or any person on behalf of the company, uses or authorises the use of any seal purporting to be a seal of the company, or issues or authorises the issue of any notice, advertisement, or other official publication, or signs or

authorises to be signed any bill of exchange, promissory note, endorsement, cheque, order of money or goods, or issues or authorises to be issued any bill of parcels, invoice, receipt, or letter of credit of the company, with respect to which the provisions of the preceding section have not been complied with, he is liable to a penalty of fifty pounds, and further is personally liable to the holder of any such bill of exchange, promissory note, cheque, or order for money or goods, for the amount thereof, unless the same is duly paid by the company.

The inspection of the register of members, and the apparent property of a company, affords the creditor a considerable test of its solvency or insolvency; but that test is incomplete unless he has the means of ascertaining the extent of its incumbrances.

Register of mortgages. S. 43.

Accordingly, the 43rd section provides that every limited company shall keep a register of all mortgages and charges specifically affecting property of the company, and shall enter therein a short description of the property mortgaged or charged, the amount of charge created, and the names of the mortgagees or persons entitled to such charge: if any property of the company is mortgaged or charged without such entry as aforesaid being made, every director, manager, or other officer of the company who knowingly and wilfully authorises or permits the omission of such entry incurs a penalty not exceeding fifty pounds: the register of mortgages must be kept for inspection by any creditor or member of the company at all reasonable times; and if such inspection is refused, any

officer of the company refusing the same, and every director and manager of the company authorising or knowingly and wilfully permitting such refusal, incurs a penalty not exceeding five pounds, and a further penalty not exceeding two pounds for every day during which such refusal continues; and in addition to the above penalty as respects companies registered in England and Ireland, any judge sitting in chambers, or the vice-warden of the stannaries in the case of companies subject to his jurisdiction, may by order compel an immediate inspection of the register.

Statement of assets and liabilities by certain companies. S. 44.

Certain companies, supposed to stand towards their members and customers in a peculiarly fiduciary relation, that is to say, banking companies, if limited, insurance companies (*a*), and deposit, provident, or benefit societies are required, before they commence business, and also on the first Monday in February and the first Monday in August in every year during which they carry on business, to make a statement in a form set out in the first schedule to the Act, of their capital, liabilities, and assets. A copy of such statement must be put up in a conspicuous place in the registered office of the company, and in every branch office or place where the business of the company is carried on. The penalties for default are very severe. Not only is the company liable to

(*a*) As to statements and returns by Life Assurance Companies not under the Friendly Societies Acts, see 33 & 34 Vict. c. 61, amended by 34 & 35 Vict. c. 58; 35 & 36 Vict. c. 41; infra, App. III.

a penalty not exceeding five pounds for every day during which such default continues, but every director and manager of the company who knowingly and wilfully authorises or permits such default incurs a like penalty.

Every member and every creditor of companies of the last-mentioned description is entitled to a copy of the above-mentioned statement on payment of a sum not exceeding sixpence.

This requirement of a statement of account was made by 21 & 22 Vict., c. 91, the Act which admitted banking companies to the privilege of limited liability. It may be doubted whether such enactments are of much value. An honest company is too anxious to produce its accounts. A dishonest company can readily, without incurring any penalty, make a summary of account that will mislead any person except a professional accountant.

Promissory notes and bills of exchange. S. 47

Considerable uncertainty prevails at common law as to the proper manner of executing promissory notes and bills on behalf of a company. To facilitate the execution of such instruments, section 47 enacts "that a promissory note or bill of exchange shall be deemed to have been made, accepted, or endorsed on behalf of any company under this Act, if made, accepted, or endorsed in the name of the company by any person acting under the authority of the company, or if made, accepted, or endorsed by or on behalf or on account of the company, by any person acting under the authority of the company."

It will be observed that this section is not im-

perative, but simply provides a particular mode of execution, without impairing the efficiency of other modes (*a*).

Prohibition against carrying on business with less than seven members. S. 48.

Among the provisions now under consideration is found a prohibition of great importance, in section 48: It enacts that "if any company carries on business when the number of its members is less than seven for a period of six months after the number has been so reduced, every person who is a member of such company during the time that it so carries on business after such period of six months, and is cognizant of the fact that it is so carrying on business with fewer than seven members, shall be severally liable for the payment of the whole debts of the company contracted during such time, and may be sued for the same, without the joinder in the action or suit of any other member."

This section, by requiring at all times a minimum of seven members, is intended to prevent a colourable registration of a company. When it comes into operation, it reduces a company to the condition of an ordinary partnership; the debts of the company become the debts of the individual members, and all the advantages of registration are lost. In the case of a limited company this entails unlimited responsibility, while in the case of an unlimited company it exposes every member to the additional risk of being sued for the whole amount of debts instead of leaving him only a contributory to the company for his rate-

(*a*) As to contracts by company, see s. 37 of Act of 1867.

able proportion towards payment of the debts of the company.

The consequences involved are so serious that the Act interposes a period of six months before the status of the members is altered.

Nothing, therefore, but the grossest negligence on the part of the directors, and of the greatest supineness on the part of the members, can ever permit the members of a company to be less in number than seven for a period of six months.

Provisions for benefit of shareholder.

Publicity is at least as important to a member of a company as to the creditor. For his benefit, therefore, it is provided, firstly, that a general meeting must be held once at least in every year; secondly, that in the case of banking companies having a capital divided into shares, one-third, and in the case of all other companies having a capital divided into shares, one-fifth in value of the shareholders, or, in the case of a mutual company, one-fifth in number of the registered members may obtain an examination of the affairs of the company by inspectors appointed by the Board of Trade.

S. 49.

S 55.

S 58.

The inspectors are armed with complete authority; they may require the production of the books of the company, and examine upon oath the officers and agents of the company in relation to its business, and must make a report to the Board of Trade.

S. 59.

The importance of this power of inspection can hardly be over-estimated. Companies have failed most disastrously in cases where the governing body, having secured the compliance of a careless majority, have,

against the wish of the wiser minority, carried on business and contracted debts long after the time of winding up had arrived. With a vigilant minority this cannot again happen. Such a minority may, in the teeth of the directors and even of a majority of the members, compel a disclosure of the true state of the company; the disclosure, if favourable, will greatly advance its interest, if unfavourable, will prevent further disaster by enabling the minority to dissolve the company.

Application for inspection to be supported by evidence. S. 57.

To prevent companies being harassed by discontented or malignant members, a condition is made by the 57th section, that the application for inspection shall be supported by such evidence as the Board of Trade may require for the purpose of showing that the applicants have good reason for requiring such investigation to be made, and that they are not actuated by malicious motives in instituting the same; and the Board of Trade are empowered to require the applicants to give security for payment of the costs of the inquiry before appointing any inspector or inspectors.

Committees of investigation S. 60.

Additional facilities are afforded to committees of investigation by the 60th section, which vests in inspectors appointed by the company in general meeting, all the powers given to inspectors appointed by the Board of Trade. A minority, therefore, will scarcely be justified in applying to the Board of Trade for inspection, unless they have previously failed in obtaining an inspection by officers appointed by the company, or can show that such inspectors have neglected their duties.

Alteration of powers of

Another evil remedied by the Act, is the difficulty

company by special resolution. Ss. 50, 51, 52

which companies formerly experienced in supplying defects in the instruments by which they were constituted. Suppose, for instance, that a company is formed with articles of association providing that the directors may borrow money on mortgage, but not on bills of exchange or promissory notes.

Business commences, money is wanted, and it is found that the only securities which are marketable are bills of exchange. In such a case, previously to the Act of 1856, the company must have gone without its money, or obtained an Act of Parliament altering its deed of settlement. Numerous examples of a similar kind occurred in practice, as it was almost impossible at the outset of a company to form a set of regulations to meet all possible contingencies.

This difficulty can no longer occur with respect to companies formed by memorandum and articles of association.

The memorandum of association contains the essential elements of a company's existence. These—styled "conditions"—the Act considers immutable, with the exception, in the case of companies limited by shares, of certain provisions relating to the increase of capital, and conversion of capital into stock (*a*).

The province of the articles of association is to provide for the internal regulation of the company, and here the Act declares that in all cases a company formed under the Act may, by special resolution,

(*a*) See the provisions of the Act of 1867 with respect to reduction of capital and shares, ss. 9-20.

make new provisions in lieu of or in addition to any "regulations" (as they are termed) of the company contained in the articles of association or in Table A.

A special resolution is then defined.

Definition of special resolution. S. 51.

It consists in fact of two resolutions of the members assembled in general meeting, and the steps to obtain it are as follows:—

1st. A notice must be issued in manner in which notices are required to be given by the company, specifying the intention to propose a resolution in the terms stated in the notice.

2nd. A meeting must be held, the resolution must be proposed, and three-fourths of the members present, either in person or by proxy, where proxies are allowed by the regulations of the company, must vote in favour of the resolution.

3rd. Notice must be given of another meeting to be held at an interval of not less than fourteen days, nor more than one month from the date of the first meeting.

4th. This second meeting must be held in pursuance of the notice; the resolution be proposed, and a majority of the members present, either in person or by proxy, where proxies are allowed, vote in its favour.

The proceedings by special resolution will be readily understood from the forms in the appendix. They appear somewhat complicated, but in practice they give rise to little difficulty. It is seldom necessary to proceed to a division on a special resolution, and the Act

provides, that unless a poll is demanded by at least five members, a declaration by the chairman that a special resolution has been carried is to be deemed sufficient evidence of the fact (*a*).

Provision where no regulations as to meetings s. 52

The regulations of some companies are so carelessly or fraudulently framed as to contain no provisions as to the votes of members, or the summoning of general meetings. To prevent such omissions paralyzing altogether the action by special resolution, the 52nd section declares that in default of any regulations as to voting every member shall have one vote, and in default of any regulations as to summoning general meetings, a meeting shall be held to be duly summoned of which seven days' notice in writing has been served on every member in manner in which notices are required to be served by Table A; and in default of any regulations as to the persons to summon meetings five members shall be competent to summon the same; and in default of any regulations as to who is to be chairman of such meeting, it shall be competent for any person elected by the members present to preside.

Registry of

Registry of a special resolution is not essential to its

(*a*) Companies—with the exception of companies regulated by Act of Parliament—that are not formed under the Acts of 1856 or 1862, on registering under the Act of 1862 acquire privileges of altering their deeds of settlement corresponding with the privileges enjoyed by companies formed by memorandum and articles of association, subject to the qualification that companies regulated by letters patent must obtain the assent of the Board of Trade to any alteration in such letters. See s. 196.

validity; but it should never be neglected, for if a copy of any special resolution be not forwarded to the registrar of joint stock companies within fifteen days from the date of the confirmation of the resolution, the company will incur a penalty not exceeding 2*l.* for every day after the expiration of such fifteen days during which such copy is omitted to be forwarded; and a fine of equal amount is imposed on every director and manager of a company who knowingly and wilfully authorizes the default of the company in sending the required copy. Special resolution. s. 53.

The remaining provisions of this part are classed under the headings, "Notices," "Legal proceedings," "Alteration of forms," and "Arbitration."

The sections relating to notices prescribe— ss. 62—64.

1st. The general mode of serving notices and other documents.

2nd. The special rules for service by post.

3rd. The mode in which notices and other documents of the company are to be authenticated.

Taking these subjects in their order, by section 62 any summons, notice, order, or other document required to be served upon the company may be served by leaving the same, or sending it through the post in a prepaid letter, addressed to the company at their registered office. Service of notices on company. s. 62.

Supposing service by post to be preferred, care must be taken to comply with the provisions of section 63, which require that any document to be served by post on the company shall be posted in such time as to admit of its being delivered in the due course of delivery s. 63.

within the period (if any) prescribed for the service thereof. All difficulty, however, in proving the posting of a letter is obviated by the concluding enactment of the same section declaring that in proving service of such document it shall be sufficient to prove that such document was properly directed, and that it was put as a prepaid letter into the post-office.

Authentication of notices of company. s. 64.

Thirdly, section 64 provides that any summons, notice, order, or proceeding requiring authentication by the company may be signed by any director, secretary, or other authorized officer of the company, and need not be under the common seal of the company, and may be in writing or in print, or partly in writing and partly in print.

Recovery of penalties. ss. 65, 66.

The effect of sections 65 and 66 as to recovery of penalties, is to make penalties under the Act recoverable in a summary manner, and to enable the whole or a portion of the penalty to be applied in payment of the costs of the proceedings, or in rewarding the person on whose information the penalty is recovered.

Costs in case of suits by limited companies, s. 69.

On the passing of the Act of 1856, it was suggested that limited companies might be guilty of oppression, by instituting speculative suits against individuals without having the means of paying the costs in the event of being beaten. To prevent this, the 69th section provides that where a limited company is plaintiff or pursuer in any action, suit, or other legal proceeding, any judge having jurisdiction in the matter may—if it appears by any credible testimony that there is reason to believe that if the defendant be successful in

his defence the assets of the company will be insufficient to pay his costs—require sufficient security to be given for such costs, and may stay all proceedings until such security be given.

The Board of Trade has power to alter or add to the forms and tables in the schedules to the Act, subject to two conditions:— **Alteration of forms. s. 71.**

First, that the fees for registration are not to be increased.

Secondly, that any alterations made in Table A. are to affect such companies only as may be registered after the date of the alteration.

Considerable technical difficulties stand in the way of companies desirous of referring their disputes to arbitration. These are so formidable that, at the instance of the railway companies, an Act was passed for the express purpose of obviating them, under the title of the Railway Companies Arbitration Act, 1859 (*a*). There seems no reason why companies under the Companies Act 1862, should not possess the same facilities for terminating their difficulties. **Arbitration. ss. 72, 73.**

The object, then, of the 72nd and 73rd sections is to make the provisions of the above-mentioned Act applicable to all companies under the Act of 1862.

(*a*) 22 & 23 Vict. c. 59.

CHAPTER IV.

WINDING-UP OF COMPANIES AND ASSOCIATIONS.

Object of Part IV. of Act.

THE fourth part of the Act relates to the last stage in the existence of a company, namely, its winding-up and dissolution.

Meaning of "contributory."

This part begins by describing a contributory to mean every person liable, or alleged to be liable, to contribute to the assets of a company in the event of its being wound up.

This description neither creates nor defines any liability, it is merely a short expression for persons liable to be made parties to the winding-up of the company. Who these persons are will be discovered by reference to Part I., chapters II. and III., and the summary appended as a note to section 74 of the Act.

Nature of liability of contributory. s. 75.

Doubts have been entertained by courts of law as to whether a call made on a contributory is entitled to be considered in the nature of a specialty debt, or debt under seal, or merely to rank as a simple contract debt. To settle the question raised, section 75 provides that the liability of any person to contribute to the assets of a company, in the event of the same being wound up, shall be deemed to create a debt (in England and Ireland of the nature of a specialty) accruing due

from such person at the time when his liability commenced, but payable at the time or respective times when calls are made for enforcing such liability.

A further question is set at rest by the declaration at the end of the same section that it shall be lawful, in the case of the bankruptcy of any contributory, to prove against his estate the estimated value of his liability to future calls, as well as calls already made.

Proof of calls on bankruptcy. s. 75.

In the event of the death of a contributory his personal representatives heirs and devisees, in the event of his bankruptcy his assignees, and in the event of the marriage of a female contributory her husband, are liable to be placed on the list of contributories in place of the persons whom they represent.

Representatives of contributories. ss. 76, 77, 78.

The liability of a deceased contributory does not, of course, attach to his real estate until his personal estate is exhausted. Strictly speaking, therefore, two steps must be taken to reach the real estate. In the first place, the personal representatives must be placed on the list, and satisfy, so far as they are able, the demands made upon them; and when their means are exhausted the heirs or devisees, as the case may be, must be called upon to supply the deficiency.

Liability of real estate. ss. 76, 99, 106.

This double process involves needless expense in cases where it is obvious at the outset that the personal estate is insufficient; accordingly the Act permits the personal representatives heirs and devisees to be put at the same time on the list of contributories, in order that the case may be proved once for all against both sets of representatives. If this be done, the real representatives can only be heard to contest the pro-

priety of a call made on them, on the ground that the personal estate is not exhausted. In any other case the order for a call will only be *primâ facie* evidence against them, and they will be entitled to make any defence which could have been made by the ancestor or testator whom they represent.

Three kinds of winding-up.

Three kinds of winding-up are provided by the Act:

Winding-up by the court,

Voluntary winding-up, and

Winding-up subject to the supervision of the court.

Whichever method of winding-up is adopted, the scheme is in many respects the same. In every instance the effect of the Act is—to substitute certain officers called "Liquidators" for the directors of the company; to consider these liquidators as trustees in the first place for the creditors, and secondly for the members; to arm them with full powers to convert into money all the property of the company, and to distribute it, first amongst the creditors, and then amongst the members.

Distinction between compulsory and voluntary winding-up.

The great distinction between the winding-up by the court, or compulsory winding-up, and the winding-up voluntarily, consists in this, that in the first case the liquidators are agents of the court, and if the company be insolvent are trustees only for the creditors; while, in the second case, the liquidators are trustees for the company, and the winding-up, so far from implying insolvency, may be only a scheme for dissolving the company with a view to changing its constitution or amalgamating with some other com-

pany. In the third instance of winding-up subject to the supervision of the court, the liquidators are appointed by the company, but are subject to the control of the court.

Choice of mode of winding-up.

The question whether a company is to be wound up by the court, or subject to the supervision of the court, or altogether voluntarily, is of great importance to creditors as well as to contributories, as the expense of each system of winding-up varies almost directly in proportion to the extent in which the aid of the court is invoked. The Act takes the greatest precautions that full opportunity of expressing their opinions should be given both to creditors and to contributories. Section 91 provides that the court may, as to all matters relating to the winding-up, have regard to the wishes of the creditors or contributories, as proved to it by any sufficient evidence, and may, if it thinks it expedient, direct meetings of the creditors or contributories to be summoned, held, and conducted in such manner as the court directs, for the purpose of ascertaining their wishes, and may appoint a person to act as chairman of any such meeting, and to report the result of such meeting to the court.

Wishes of creditors and contributories to be consulted.

Section 149 enacts, almost in the same language, that the court may, in determining whether a company is to be wound up altogether by the court or subject to the supervision of the court, in the appointment of a liquidator or liquidators, and in all other matters relating to the winding-up subject to supervision, have regard to the wishes of the creditors

or contributories as proved to it by any sufficient evidence, and may direct meetings of the creditors or contributories to be summoned, held, and regulated in such manner as the court directs for the purpose of ascertaining their wishes, and may appoint a person to act as chairman of any such meeting, and to report the result of such meeting to the court.

Voluntary winding-up possesses advantages of compulsory winding-up.

A voluntary winding-up may in great measure command the advantages without the disadvantages of a compulsory process, as under the 135th section the contributories may delegate the appointment of all or any of the liquidators to the creditors, thereby affording the latter a full control over the proceedings in the winding-up; and the liquidators themselves, in case of difficulty, may ask the court to determine any question arising in the matter of such winding-up, or to exercise as respects the enforcing of calls, or in respect of any other matter, all or any of the powers which the court might exercise if the company were being wound up by the court.

s. 136.

The sanction of the court will, however, not often be required, if the parties to the winding-up agree as to the course to be adopted, for section 136 declares that any arrangement entered into between a company about to be wound up voluntarily, and its creditors, shall be binding on the company if sanctioned by an extraordinary resolution, and on the creditors if acceded to by three-fourths in number and value of the creditors, subject to the right of appeal given by the Act.

It seems, then, that nothing but an extreme case of

fraud on the part of the company or its officers makes it advisable for either creditors or contributories to wind up a company altogether by the court. Unfortunately, if a company get into difficulties the deliberate judgment of creditors and contributories is seldom exercised; an enterprising attorney, assisted by a discontented member or an angry creditor, loses no time in filing a petition, and in plunging the company into a sea of litigation, from which little is saved for the benefit either of contributories or creditors. The real remedy must be looked for in the decisions of some of the judges of the Court of Chancery (*a*), who, entering into the spirit of the Act of 1862, discountenance as far as possible windings-up by the court, and do not conceal their belief that creditors and contributories not unfrequently understand their own interest better than a judge of the Court of Chancery. Perhaps roguery had sometimes better escape unrebuked than the virtuous indignation of the court be purchased at a price which, taxing the contributory to the utmost, hands over the whole fruits to the parties engaged in the conduct of the

(*a*) See in particular the decisions of Lord Romilly, in *Keynsham Co.*, 33 Beav. 123, 9 Jur. N. S. 885; *Life Association of England*, 34 L. J., N. S. Ch. 64; the opinion given by Lord Romilly on, and the order made by Lord Chancellor Westbury in *Factage Parisien Co.*, 11 Jur. N. S. 121, 34 L. J., N. S. Ch. 140; the judgment of V.-C. Wood, in *London and Merc. Disc. Co.*, 1 Eq. 277; *Bank of Gibraltar and Malta*, 1 Ch. 69; and the other cases cited in the notes to ss. 91 and 147.

proceedings, leaving creditors and contributories alike discontented and unpaid.

Winding-up by Court

In considering the details of the various systems of winding-up, it will be well to follow the course of the Act, and begin with the winding-up by the court.

Circumstances under which company may be wound up by the court. s. 79.

A company may be wound up by the court:—

1. Whenever the company has passed a special resolution requiring the company to be wound up by the court:
2. Whenever the company does not commence its business within a year from its incorporation, or suspends its business for the space of a whole year:
3. Whenever the members are reduced in number to less than seven:
4. Whenever the company is unable to pay its debts:
5. Whenever the court is of opinion that it is just and equitable that the company should be wound up.

As a creditor is precluded from suing individual members, it was necessary to give him a summary mode of reducing the company to the alternative of paying him or being wound up. The Act, therefore, provides that a company shall be deemed unable to pay its debts (*a*):—

1. Whenever a creditor, by assignment or otherwise, to whom the company is indebted, at law or in equity, in a sum exceeding fifty pounds

(*a*) Section 68.

then due, has served on the company, by leaving the same at their registered office, a demand under his hand requiring the company to pay the sum so due, and the company has for the space of three weeks succeeding the service of such demand neglected to pay such sum, or to secure or compound for the same to the reasonable satisfaction of the creditor:

2. Whenever, in England and Ireland, execution or other process issued on a judgment, decree, or order obtained in any court in favour of any creditor, at law or in equity, in any proceeding instituted by such creditor against the company, is returned unsatisfied in whole or in part:
3. Whenever, in Scotland, the inducie of a charge for payment on an extract decree, or an extract registered bond, or an extract registered protest have expired without payment being made:
4. Whenever it is proved to the satisfaction of the court that the company is unable to pay its debts.

Of course the company will not be deemed to be indebted to a creditor until he has proved his claim, and if there be any serious doubt as to the existence of the debt, the court will stay proceedings until the debt is established at law (*a*).

Jurisdiction in winding-up.

The entire jurisdiction over the winding-up of companies is in England vested in the High Court of

(*a*) *Catholic Publishing Co.*, 38 L. J., N. S. Ch. 325, 19 Jur. N. S. 193.

Chancery, with the exception of companies engaged in working mines within and subject to the jurisdiction of the Stannaries, where the primary jurisdiction resides in the Vice-Warden of the Stannaries; but he may, if he thinks fit, transfer any company to the jurisdiction of Chancery by giving a certificate that, in his opinion, the company would be more advantageously wound up in that court. (a)

In Ireland the Court of Chancery, in Scotland the Court of Session in either division thereof, is invested with the power of winding-up companies registered in Ireland and Scotland.

s. 81. The Court of Chancery in England may, if it thinks fit, delegate its powers of winding-up to the Court of Bankruptcy having jurisdiction in the place where the registered office of the company is situate.

Presentation of petition. s. 82. The proceedings for winding-up a company commence by the presentation of a petition to the court: it may be presented by the company, or by any one or more creditor or creditors, contributory or contributories of the company, or by all or any of the above parties, together or separately; and it is often desirable to make a creditor a co-petitioner with a contributory, for the purpose of having a representation both of creditors and contributories before the court. The petition will, of course, state generally the nature of the company, and allege the occurrence of one or more of the circumstances which authorize the court to make a winding-up order.

(a) For further provisions relating to the winding-up of these companies, see the Stannaries Act 1869, 32 & 33 Vict., c. 19.

A form of petition will be found in App. II. The rules for intituling, advertizing, and serving the petition are given in the orders of the Court of Chancery, and need not be repeated here. The petition must be verified by an affidavit, of which a form is given in the schedule to the orders (*a*). **Form of petition.**

The petition is the commencement of the winding up (*b*), and invests the court with absolute control over the proceedings. It may dismiss the petition, adjourn it conditionally or unconditionally, make an interim order, or any other order it deems just. If the property of the company require immediate protection, a provisional liquidator may be appointed, and the judge may avoid all unnecessary expense in litigation by deciding questions in chambers, instead of in open court. **Proceedings in winding-up. ss. 83, 84, 86.**

The Act secures the equal distribution of the assets amongst the creditors: Firstly, by providing that all dispositions of the property of the company made between the commencement of the winding-up and the order for winding-up shall, unless the court otherwise orders, be void: Secondly, by invalidating any attachment, sequestration, distress, or execution put in force against the estate or effects of the company after the commencement of the winding-up: Thirdly, by enacting that any such conveyance, mortgage, delivery of goods, payment, execution, or other act relating to property, as would, if made or done by or against any individual trader, be **s. 153. s. 163. s. 164.**

(*a*) See App. I., part 2, for General Orders and Rules of Court of Chancery.

(*b*) See note to s. 84.

deemed in the event of his bankruptcy to have been made or done by way of undue or fraudulent preference of the creditors of such trader, shall, if made or done by or against any company, be deemed, in the event of such company being wound up, to have been made or done by way of undue or fraudulent preference of the creditors of such company, and shall be invalid accordingly.

Suits and actions put a stop to.

The above precautions would be of little avail if the same system were continued that existed under the Winding-up Acts of 1848, 1849. Those Acts dealt only with the members of a company, and reserved to the creditors their remedies by action and suit in chancery.

No sooner was a petition presented for winding-up a company than a scramble ensued between the contributories desirous of being wound up, and the creditors anxious to administer the affairs of the company through the medium of a suit in chancery, or to bring actions against particular members of the company for the whole amount of the debts due to them. The Act of 1862 effectually stops such mischievous litigation.

s. 85.

By section 85, as soon as a petition has been presented, and before making an order for winding-up the company, the court may, on the application of the company, or of any creditor or contributory, restrain further proceedings in any action, suit, or proceeding against the company, on such terms as the court thinks fit; and may also at any time after the presentation of such petition, and before the first appointment of liquidators, appoint provisionally an official liquidator of the estate and effects of the company.

s. 87.

When an order has once been made for winding-up the company, the intervention of the court to stop actions and suits is not required, as the Act itself provides that no suit, action, or other proceeding shall be proceeded with or commenced against the company except with the leave of the court.

Appointment of official liquidators. ss. 92, 93, 94.

The court has now assumed the office of collecting the assets for the purpose of distributing them in a due course of administration, and the next step it takes is to appoint the official liquidators, the persons to whom the business of winding-up the company is to be intrusted.

In practice the appointment of liquidators is made by a chief clerk in chancery, and the case is not brought into court unless the parties are dissatisfied with the chief clerk's selection.

Powers of official liquidators. s. 95.

The powers of the official liquidators are very extensive.

The property of the company is not technically vested in them, but they have ample powers conferred on them of selling, bringing actions, proving for dividends, and doing all such other things as are necessary for winding-up the company. They are not obliged to bring the business of the company to a sudden close, but may continue it so long as they think necessary for the beneficial winding-up of the company.

s. 96.

The court may provide by any order, that the official liquidators may exercise any of their powers without the intervention of the court, but if no such order is made, they must refer to the court for its directions on every occasion.

Appointment of solicitor. s. 97.

The official liquidators may, with the approval of the

court, appoint a solicitor to help them in their labours; and the court has power to award to their appointee such remuneration for his services as it thinks fit. The salary of the official liquidators themselves is fixed by the court, either at the time of their appointment or afterwards.

Salary of liquidators.

Proceedings of liquidators.

As soon as the official liquidators are appointed, they proceed to take into their custody all the property of the company, and to make out a list of the persons liable to contribute to pay the debts of the company. In making out the above list, the liquidators must distinguish between persons who are contributories in their own right, and persons who are contributories as being representatives of, or being liable to, the debts of others. They will be guided by the principles that have been pointed out as tests of the liability of the shareholders; the list is revised by the chief clerk, and any member who thinks he has good ground for objecting to the revision, may appeal to the court (*a*).

List of contributories. s. 99.

Powers of court. ss. 101, 102.

No necessity exists for the liquidators bringing actions to enforce contribution, as the court has full power of ordering any contributory to pay any moneys due from him to the company as an ordinary debt, as well as any contribution required of him, and of enforcing its orders by the same methods in which orders made within the ordinary jurisdiction of the Court of Chancery are enforced.

s. 118.

If a contributory be about to abscond, or to remove, or to conceal any of his property, the court may direct

(*a*) As to contributories, see Part I., Chap. III., p. 69; note to section 74; as to details of practice, see Appendix I., Part II.

him to be arrested, and his books, papers, goods and chattels, to be seized and safely kept, until the court orders them to be released; moreover, the court may summon to appear before it persons suspected of having any property of the company in their possession, or supposed to be indebted to the company, or capable of giving information concerning the affairs of the company, and may require such persons to make a complete disclosure. s. 115.

As soon as the creditors are satisfied, the court proceeds to adjust the rights of the contributories amongst themselves, and for that purpose has power to make calls on the contributories, to the extent of their liability for such sums as it deems expedient. Adjustment of rights of contributories. s. 109.

The court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the estate of the company of the costs, charges, and expenses incurred in winding-up in such order of priority as the court thinks just. Court to order costs. s. 110.

When the affairs of the company have been completely wound up, the court makes an order that the company be dissolved from the date of such order, and the company will be dissolved accordingly. Dissolution of company. s. 111.

Orders made by the court in England may be enforced in Scotland and Ireland by the same courts as would have had jurisdiction in winding-up the company if its registered office had been situate in Scotland or Ireland. s. 120.

In the same manner, orders made in Scotland may be enforced in England and Ireland, and orders made in Ireland may be enforced in England and Scotland by

the courts having jurisdiction in winding-up companies in those countries respectively.

Voluntary winding-up. s. 129.

The Act proceeds to provide that a company may be wound up voluntarily :—

1. Whenever the period, if any, fixed for the duration of the company by the articles of association expires, or whenever the event, if any occurs, upon the occurrence of which it is provided by the articles of association that the company is to be dissolved, and the company in general meeting has passed a resolution requiring the company to be wound up voluntarily :
2. Whenever the company has passed a special resolution requiring the company to be wound up voluntarily :
3. Whenever the company has passed an extraordinary resolution to the effect that it has been proved to their satisfaction that the company cannot by reason of its liabilities continue its business, and that it is advisable to wind up the same.

s. 129.

The nature of a special resolution has been fully explained at page 167. An extraordinary resolution is a resolution passed by a majority of not less than three-fourths of the members of the company assembled at a general meeting, of which notice specifying the intention to propose such resolution has been duly given ; in other words, an extraordinary resolution is the first stage of a special resolution, or a special resolution not requiring confirmation at a subsequent meeting.

In the voluntary winding-up of a company, the liquidators are the agents of the company, and are appointed by them in general meeting; they are invested with all the powers of official liquidators, and, in addition thereto, may make calls on the contributories for payment of creditors, and for the adjustment of the rights of the contributories amongst themselves. They act without the intervention of the court, but are empowered to apply to the court for aid to determine any questions arising in the matter of the winding-up, or to exercise as respects the enforcing of calls, or in respect of any other particular matter, any of the powers which the court might exercise for the company while being wound up compulsorily.

Liquidators in voluntary winding-up. s. 138.

s. 138.

As soon as the affairs of the company are fully wound up, the liquidators must prepare an account, showing the manner in which the winding up has been conducted, and the property of the company disposed of. The next step is to call a general meeting for the purpose of considering the account, and hearing any explanation that may be given by the liquidators. The meeting has no power to open the accounts, or reverse any of the proceedings of the liquidators; but any member of the company who thinks they have been guilty of a breach of trust, may of course institute proceedings in the Court of Chancery, with a view of punishing them. The liquidators must make a return to the registrar of the fact of a meeting having been held, and of the date thereof, and at the expiration of three months from the date

s. 142.

s. 143.

of the registration of such return, the company will be dissolved. If the liquidators make default in making the return to the registrar, they incur a penalty not exceeding 5*l.* for every day during which the default continues.

Winding-up subject to supervision of court. ss. 147—152.

The third species of winding-up is called a winding-up subject to the supervision of the court. It takes place where a company in the course of being wound up voluntarily has proceedings instituted against it for the purpose of enforcing a compulsory winding-up.

Under such circumstances the court has power to direct the voluntary winding-up to continue under the supervision of the court.

The effect of the order is to continue the voluntary liquidators as agents for the purpose of conducting the winding-up, and to avoid the expense of constant reference to the court, and of constant payment of money into court. At the same time if difficulties occur, any creditor or contributory may appeal to the court against an order of the liquidators; and on hearing such appeal, the court may modify or annul the order of the liquidators, and in an extreme case has power to put an end to the voluntary liquidation, and take the whole proceedings into its own hands.

Mode of effecting amalgamation of companies. ss. 161, 162.

Before concluding the subject of winding-up companies, it may be useful to mention the mode in which companies may be amalgamated through the process of voluntary liquidation.

By the general law it is well known, that an amalgamation—in the sense of an arrangement making shareholders in one company shareholders in another—cannot be effected without the aid of parliament (*a*).

Each company has its distinct name, its separate capital, and separate creditors, and no act of a majority, however large, can compel a minority, though it consists only of one shareholder, to enter into obligations inconsistent with the separate status of the company to which it belongs. Indirectly, however, the Act of 1856 enabled amalgamations to be effected by authorizing companies to dissolve themselves by special resolution, and to sell their business to other companies. The course adopted was this. The two companies which wished to amalgamate registered under the Act of 1856, and one dissolved itself on the understanding that its members would be absorbed by the other company.

The practical obstacle to effecting a union in this manner was the impossibility of making any arrangement legally binding on both companies. The effect of it depended wholly upon the good faith of the parties, as it was competent for a dissentient minority to insist on being paid exorbitant prices for their shares, or to expose the liquidators to the liability of an action for a breach of trust for selling the property of the company at an inadequate price.

To meet this difficulty section 17 of the Joint

(*a*) See the observations of Wood, V.-C., in *Bagshaw, ex parte*, 4 Eq. 341.

Stock Companies Act 1857, was passed, and with certain amendments forms the substance of sections 161 and 162 of the Companies Act 1862. These sections provide in effect that the liquidators may, with the sanction of a special resolution of the company, enter into any arrangements that shall be thought expedient, as to the terms on which the members of the dissolving company are to become members in the other company.

Suppose, then, that company A and company B are desirous of amalgamating. They register under the Act of 1862, and company A passes special resolutions, containing not merely a declaration that the company is to be wound up, but stating the very arrangements that have been entered into with company B. The liquidators will then proceed to wind up company A. If any member dissents from the special resolution, he may demand the value of his interest in the company, but he will have no power to prevent the amalgamation, or to require an enhanced price as a premium for his concurrence.

In the instance that has been put, company B is supposed to be legally capable of purchasing the property of company A. If that be not the case, a further step is taken. A third company is formed, having powers to purchase the property of each of the original companies A and B. The original companies proceed to pass special resolutions, dissolving themselves, and declaring the terms on which their members engage to become members of the new company; and, as soon as the dissolution of the original companies is com-

pleted, their members, as a matter of course, become members of the new company.

The question immediately suggests itself, why adopt this indirect method of effecting what might be done directly, by enacting that companies should be at liberty to amalgamate with the sanction of special resolutions of their members? The answer is, that if an alteration in the separate status of a company were permitted without compelling the company to dissolve itself, creditors would constantly be defrauded, and members be entrapped into arrangements possibly detrimental to their interests.

The Act, by interposing the necessity of a dissolution, provides for the payment of creditors before amalgamation can be effected, whilst it enables a shareholder who dissents from the opinion of the majority to retire from the company and to receive the market value of his shares.

Proof of debts in winding-up.

Disputes have often occurred under the Bankruptcy Acts as to the capability of certain debts being admitted to proof, on the ground of their being contingent, or involving questions of unliquidated damages.

s. 158.

In the event of a company being wound up, no creditor can possibly complain of being excluded, as the 158th section provides that all debts payable on a contingency, and all claims against the company, present or future, certain or contingent, ascertained or sounding only in damages, shall be admissible to proof against the company, a just estimate being

made, so far as is possible, of the value of all such debts or claims as may be subject to any contingency or sound only in damages, or for some other reason do not bear a certain value.

Power as to payment of debts.

In so complicated a business as winding-up a company, it not unfrequently becomes expedient to pay certain classes of creditors—for example, servants, small tradesmen, and so forth—in full, while the larger creditors are willing to consent to an abatement of their claims.

s. 159.

Full power to make any such arrangement is given by section 159, subject to the restriction that, in the case of a company being wound up by the court, or subject to the supervision of the court, the liquidators must obtain the sanction of the court; and in the case of a company being wound up voluntarily, must convene a general meeting, and have the proposed arrangement ratified by an extraordinary resolution.

Power to compromise with contributories.

The last-mentioned section applies only to arrangements with creditors—a power to compromise with contributories is no less essential; for in winding-up companies where the calls are very large, experience shows that a contributory will make away with his property, abscond, or use any device rather than see his whole means of living gradually absorbed to liquidate the debts of the company. On the other hand, if a compromise can be effected on any terms short of absolute ruin, large sums of money are readily brought forward by a contributory or his friends, as the price of being freed from all further claims. In short, it is found possible to raise limited sums of large amount

from a body of contributories, but impossible in practice, whatever the law may allow, to enforce unlimited or nearly unlimited liability to its fullest extent.

With a view, therefore, to accommodate the law to the practical exigencies of society, section 160 provides that the liquidators may, with the sanction of the court where the company is being wound up by the court or subject to the supervision of the court, and with the sanction of an extraordinary resolution of the company where the company is being wound up altogether voluntarily, compromise all calls and liabilities to calls, debts, and liabilities capable of resulting in debts, and all claims, whether present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the company and any contributory or alleged contributory, or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets of the company or the winding-up of the company, upon the receipt of such sums, payable at such times, and generally upon such terms as may be agreed on, with power for the liquidators to take any security for the discharge of such debts or liabilities, and to give complete discharges in respect of all or any such calls, debts, or liabilities.

Power of court to assess damages against delinquent directors and officers.

In concluding this part, it may be well to notice that, in the course of a winding-up by the court, if it appears that any past or present director, manager, official or other liquidator, or any officer of such com-

pany, has misapplied or retained in his own hands or become liable or accountable for any moneys of the company, or been guilty of any misfeasance or breach of trust in relation to the company, the court may, on the application of any liquidator or creditor or contributory, notwithstanding that the offence is one for which the offender is criminally responsible, examine into his conduct, and compel him to repay any moneys so misapplied or retained, or for which he has become liable or accountable, together with interest after such rate as the court thinks just, or to contribute such sums of money to the assets of the company by way of compensation as the court thinks just (*a*).

And power to institute a prosecution against delinquent directors, managers, officers, or members of a company is given by sections 167, 168, in the case of a winding-up subject to the supervision of the court, or of a voluntary winding-up, as well as in the case of a winding-up by the court.

(*a*) See note to s. 165.

CHAPTER V.

REGISTRATION OFFICE.

Constitution of registration office. S. 174.

PART five is entitled Registration Office, and provides for the constitution of the office for registering companies.

It empowers the Board of Trade to appoint such registrars, assistant registrars, clerks, and servants as it may think necessary for the registration of companies under the Act, and to remove them at pleasure (*a*).

The determination of the places where the registration offices are to be established is also left to the discretion of the Board of Trade, subject to the proviso that one registration office, at the least, is to be established in England, Scotland, and Ireland respectively.

For the convenience of mining companies, the Act declares that the Board of Trade may require that the registrar's office of the court of the Vice-warden of the Stannaries shall be one of the offices for the registration of companies formed for working mines within the jurisdiction of that court.

(*a*) The registrar is little more than a ministerial officer whose duty it is to see that the documents presented are in the proper shape, and that the fees are paid. See, in illustration of his position and duties, *Peel's case*, 2 Ch. 674.

Publicity in the constitution and transactions of a company is the main requirement of the Act; hence the deposit at the registration office of the memorandum and articles of association, and the return to be made to the registrar of the members of joint stock companies, and the directors of mutual companies.

Inspection of documents at registration office. S 174 (5)

These enactments, however, would be of little avail unless ample means were provided for the inspection by the public of the documents and returns contained in the registration office.

Accordingly, the fifth division of section 174 authorizes any person, on payment of such fee, not exceeding one shilling, as may be appointed by the Board of Trade, to inspect the documents kept by the registrar.

A certificate of the incorporation of a company may be obtained at a price not exceeding five shillings, and a certified copy of any document, or part of a document, may be obtained at a cost not exceeding sixpence a folio, or in Scotland sixpence for each sheet of 200 words.

CHAPTER VI.

APPLICATION OF ACT TO EXISTING COMPANIES.

Application of Act to existing companies. S. 175.

THE sixth and seventh parts define the application of the Act to companies existing at the date of the passing thereof.

Part six relates only to companies registered under the Joint Stock Companies Acts, which are defined by section 175 to mean "the Joint Stock Companies Act, 1856," "the Joint Stock Companies Acts, 1856, 1857," "the Joint Stock Banking Companies Act, 1857," and the Act "to enable Joint Stock Banking Companies to be formed on the Principle of Limited Liability," or any one or more of such Acts, as the case may require; but not to include the Act passed in the eighth year of the reign of her present Majesty, chapter 110, and intituled "An Act for the Registration, Incorporation, and Regulation of Joint Stock Companies."

19 & 20 Vict. c. 47.
20 & 21 Vict. c. 14.
20 & 21 Vict. c. 49.
21 & 22 Vict. c. 91.
7 & 8 Vict. c. 110.

The above companies are readily disposed of. The Act of 1862 is substituted for the Joint Stock Companies Acts, as above defined, with a proviso as to companies *formed as well as registered* under those Acts, that Table A is not to apply to them, and that the date of the original registration is still to be deemed the date of their incorporation.

With respect to companies *registered but not formed*

under the said Joint Stock Companies Acts, s. 177 declares that the Act of 1862 shall apply to them in the same manner as it is declared to apply to companies registered but not formed under that Act, with the qualification that the date of original registration is still to be deemed the date of their incorporation.

Transfer of shares. S. 178.

The Act of 1862 does not re-enact the sections of the Act of 1856 relating to the transfer of shares. A provision, therefore, is inserted that any company registered under the Joint Stock Companies Acts, as above defined, or any of them, may cause its shares to be transferred in manner hitherto in use, or in such other manner as the company may direct.

It will be recollected also that the Act of 1862 empowers unlimited companies formed under its provisions to alter any regulations relating to the amount of capital, or its distribution into shares. There seemed no reason why a similar privilege should not be extended to existing unlimited companies, registered but not formed under the Act of 1862. Hence the enactment of section 176, that the power of altering regulations by special resolution shall, in the case of an unlimited company formed and registered under the Joint Stock Companies Acts, extend to altering any regulations relating to the amount of capital or its distribution into shares, notwithstanding such regulations are contained in the memorandum of association.

Companies authorized to register under the Act. S. 179.

Part seven is very extensive in its operation, and has for its subject-matter companies authorized to register under the Act.

With one immaterial exception, every company consisting of seven or more members, and duly constituted by Act of Parliament, letters patent, or otherwise, may register under the Act of 1862; and, subject to certain restrictions, with or without limited liability.

The exception comprises only mutual companies enjoying limited liability by virtue of Act of Parliament or letters patent:—probably no such companies exist; but the reason for excluding them from the privilege of registering, is the inapplicability to such companies of the provisions for winding up.

The restrictions as to liability are—

First, that no company which has had limited liability conferred by Act of Parliament, or by letters patent, is allowed to extend or to change its liability by becoming an unlimited company, or a company limited by guarantee. S. 179 (2).

Secondly, that a company must have a joint stock capital to register as a company limited by shares. S. 179 (3).

Thirdly, that in case of a banking company issuing its own notes, the limit of liability will not extend to such issue. S. 182.

The reasons for the above restrictions are, as to the first, that it would not be just that a shareholder should have his limited liability destroyed or modified by registration.

The second is rendered necessary by the nature of the company itself, as the possession of a share capital is obviously essential to a limitation of liability that is measured only by reference to shares.

The third is a question of policy, and was introduced

in the House of Lords as a supposed safeguard to the holders of country notes.

S. 179 (1) (5). In the case of every company the consent of a general meeting must be given to the proposed registration, and in the case of every company that desires to change its liability from unlimited to limited, a consent to the change must be given by not less than three-fourths of the members present personally, or by proxy, in cases where proxies are allowed by the regulations of the company, at some general meeting summoned for that purpose.

S. 179 (6). Moreover, if the company is desirous of registering as a company limited by guarantee, a resolution must, at the time of giving its assent to being registered under the Act, be passed by the meeting, to the effect that each member undertakes to contribute to the assets of the company, in the event of the same being wound up, during the time that he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before the time at which he ceased to be a member, and of the costs, charges, and expenses of winding up the company, and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required, not exceeding a specified amount.

Mode of registration. S. 183. The mode of registration is pointed out in sections 183 and 184. It differs in some respects, according as the company is a joint stock or a mutual company.

A joint stock company must send to the registrar,

1. A list showing the names, addresses, and occupations of all persons who on a day named in

such list, and not being more than six clear days before the day of registration, were members of such company, with the addition of the shares held by such persons respectively, distinguishing, in cases where such shares are numbered, each share by its number:

2. A copy of any Act of Parliament, royal charter, letters patent, deed of settlement, contract of copartnery, cost book regulations, or other instrument constituting or regulating the company:

3. If limited liability is desired, the list of members must be accompanied by a statement specifying the following particulars; (that is to say,)

   The nominal capital of the company and the number of shares into which it is divided:

   The number of shares taken and the amount paid on each share:

   The name of the company, with the addition of the word "limited" as the last word thereof:

   With the addition, in the case of a company intended to be registered as a company limited by guarantee, of the resolution declaring the amount of the guarantee,

Requisitions for registration by existing company not being a joint stock company, S. 184.

As a mutual company cannot readily supply a list of members, it is required to deliver to the registrar a list showing the names, addresses, and occupations of the directors or other managers (if any) of the company, also a copy of any Act of Parliament, letters patent, deed of settlement, contract of copartnery, cost book

regulations, or other instrument constituting or regulating the company, with the addition, in the case of a company intended to be registered as a company limited by guarantee, of the resolution declaring the amount of guarantee.

On registration of banking company with limited liability, notice to be given to customers S. 188

Banking companies desirous of acquiring limited liability are placed under a special obligation by section 188, which enacts that every banking company existing at the date of the passing of the Act which registers itself as a limited company shall, at least thirty days previous to obtaining a certificate of registration with limited liability, give notice that it is intended so to register the same to every person and partnership firm who have a banking account with the company; and in case the company omits to give such notice, then as between the company and the person for the time being interested in the account in respect of which such notice ought to have been given, and so far as respects such account and all variations thereof down to the time at which such notice shall be given, but not further or otherwise, the certificate of registration with limited liability shall have no operation.

Ss 160, 189, 191, 193.

The list of members or directors, and the other documents required to be sent to the registrar, must be authenticated by a statutory declaration of two of the directors, or any other two principal officers of the company; but no fees are payable on registration, except in cases where the company is desirous of changing the character of its liability from unlimited to limited.

The effect of registration is to place the company, as respects the future, in the same position as if it had originally been formed under the Act, with the following exceptions :— S. 196.

(1.) That Table A does not apply unless adopted by special resolution.

(2.) That the provisions of the Act relating to the numbering of shares do not apply to any joint stock company whose shares are not numbered.

(3.) That a company regulated by Act of Parliament cannot alter any of the provisions of its Act by special resolution.

(4.) That a company regulated by letters patent must obtain the leave of the Board of Trade before altering by special resolution any of the provisions of the letters patent.

As respects the past, the Act preserves unimpaired the obligations of all persons liable to contribute to the debts and liabilities of the company contracted prior to registration, but protects them from being sued as individual shareholders, or otherwise laid under contribution, except through the medium of the statutory process of winding up.

As respects the future, the liabilities of the members will be determined by the Act of 1862.

Duties imposed by registration

The duties which registration imposes on the company are not onerous. They consist in keeping a register of members and mortgages, in making certain returns to the registrar of the state of the company, in having a registered office for business, and in holding a general meeting once at least in every year (*a*).

(*a*) Ss. 25, 26, 39, 40, 43, 45, 49.

General result.

The results of this chapter may be summed up as follows :—

Registration in the case of a company established by Act of Parliament or letters patent will seldom be resorted to, except for the purpose of dissolving altogether, or of amalgamating through the medium of a dissolution. To every other company registration is an unmixed advantage, and should never be omitted, as it affords the members complete immunity from the legal difficulties which beset unincorporated associations, and gives the company in its external relations the advantages conferred by corporate unity in place of the individual liability of ordinary partnerships.

CHAPTER VII.

WINDING-UP OF UNREGISTERED COMPANIES.

Explanation of part eight of Act.

THE eighth part of the Act has little in common with the preceding divisions; it is, in fact, a general winding-up Act, and was introduced into the Act in order to avoid the repetition in a separate statute of such provisions in the Act as were deemed applicable to the winding-up of companies and partnerships other than those registered under it.

In order, therefore, to explain this part of the Act, it will be necessary only to point out the differences between its provisions and those contained in part four.

Application of part eight of the Act. S. 199.

The associations capable of being wound up under this part are every partnership, association, or company (except railway companies incorporated by Act of Parliament) (*a*) consisting of more than seven members, and not registered under the Act; in short, every society, whatever be its object, mercantile or charitable, except railway companies, comes within this part of the Act, unless it chooses to register itself under the Act.

(*a*) Railway companies were excepted on the ground of the peculiar nature of the property held by them, but can now be wound up under this part, 30 & 31 Vict. c. 127; 32 & 33 Vict. c. 114. See summary of the legislation as to winding up railway companies in introductory note to this part.

Winding up under this part of the Act *must be compulsory*, and neither voluntary nor under the supervision of the court.

Jurisdiction in winding up under part eight. S. 199.

Part four gives jurisdiction to the English, Scotch, or Irish courts, according to the place in which the registered office of the company is situated. An unregistered company has no registered office; it is therefore enacted that such a company shall, for the purpose of determining the court having jurisdiction in the matter of the winding-up, be deemed to be registered in that part of the United Kingdom where its principal place of business is situate; or, if it has a principal place of business situate in more than one part of the United Kingdom, then in each part of the United Kingdom where it has a principal place of business; moreover, the principal place of business of an unregistered company, or (where it has a principal place of business situate in more than one part of the United Kingdom) such one of its principal places of business as is situate in that part of the United Kingdom in which proceedings are being instituted, shall for all the purposes of the winding-up of such company be deemed to be the registered office of the company.

Circumstances under which company may be wound up under part eight. S. 199.

Again, several of the circumstances under which part four authorizes a company to be wound up are inapplicable to an unregistered company. Part eight, therefore, provides that the circumstances under which an unregistered company may be wound up are as follows: (that is to say,)

(*a.*) Whenever the company is dissolved, or has

ceased to carry on business, or is carrying on business only for the purpose of winding up its affairs:

(*b.*) Whenever the company is unable to pay its debts:

(*c.*) Whenever the court is of opinion that it is just and equitable that the company should be wound up.

As this part of the Act applies to unincorporate as well as to corporate companies, the inability of a company to pay its debts requires a more extended definition, which will be found in sub-section (4) of s. 199.

Who to be deemed a contributory in the event of company being wound up

The persons liable as contributories in companies under the Act are ascertained by reference to the provisions of that Act. Similarly, in the case of unregistered companies and partnerships, recourse must necessarily be had to the regulations of the particular company or partnership, for the determination in each case of the persons liable to be made contributories. Full power to deal with every case according to its special circumstances is given by section 200, which declares that, in the event of an unregistered company being wound up, every person shall be deemed to be a contributory who is liable to pay or contribute to the payment of any debt or liability of the company, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members amongst themselves, or to pay or contribute to the payment of the costs of winding up the company, and that every such contributory shall be liable to contribute to the assets of the company in the course of the winding up

all sums due from him in respect of any such liability as aforesaid.

Property may in certain cases be vested in official liquidator. S. 203.

With a similar intention of adapting the provisions of the Act to partnerships, section 203 provides that if any unregistered company has no power to sue and be sued in a common name, or if for any reason it appears expedient, the court may direct that all or any part of the property of the company is to vest in the official liquidator, and the official liquidator may, in his official name or in such name and after giving such indemnity as the court directs, bring or defend any legal proceeding relating to any property vested in him or any other legal proceedings necessary for effectually winding up the company and recovering the property thereof.

Explanation of s. 203.

It will be recollected that under part four the liquidators take no legal interest in the property of the company, but are simply agents armed with powers to dispose of the whole of that property, and do, in the name of the company, all acts required to wind it up effectually. In the case of a partnership which cannot sue or be sued in a common name, the liquidators would, if they acted only under part four, at once be brought to a stand-still through an inability to make a valid conveyance of any land of the company, to recover debts due, or otherwise use the name of the partnership for any purpose. Hence the introduction of this section, by which the whole property of the partnership will, under the order of the court, pass to the liquidator in the same manner as in bankruptcy the entire property of the bankrupt becomes vested in the trustee.

Power of court to restrain proceedings.

Part four makes ample provision for stopping actions against *the company* as soon as the winding-up process is set on foot. It takes, however, no notice of actions *against a contributory*, for the simple reason that no such actions can exist.

S. 201.

Here, again, part eight comes in aid of unincorporate partnerships and companies. By section 201 the court may, at any time after the presentation of a petition for winding up an unregistered company, and before making an order for winding up the company, on the application of any creditor of the company, restrain further proceedings in any proceeding against any contributory of the company, on such terms as the court thinks fit.

Effect of order for winding up company. S. 202.

And by section 202, where an order has been made for winding up an unregistered company, no legal proceeding can be commenced or proceeded with against any contributory of the company in respect of any debt of the company, except with the leave of the court, and subject to such terms as the court may impose.

Part nine.

The ninth part of the Act, relating to Repeal of Acts and Temporary Provisions, does not require any special explanation.

CHAPTER VIII.

OBSERVATIONS ON THE COMPANIES ACT 1867.

Act result of financial panic.

Objects of Act.

THIS Act is the legislative result of the financial panic of 1866. It has the following objects in view:—

1. The enabling companies to be constituted with limited liability in the members, and unlimited liability in the directors. Ss. 4—8.

2. The enabling companies to reduce their capital. Ss. 9—20.

3. The enabling companies to subdivide their shares. Ss. 21—22.

4. The enabling associations formed for the purpose of promoting commerce, art, science, religion, charity, or any other useful object which does not involve the payment of a dividend to the members, to register themselves as limited companies under the Act, without annexing the word "limited" to their names. S. 23.

5. The making certain regulations with respect to calls on shares. Ss. 24—25.

6. The enabling a transferor of shares to enforce a registration of the transfer. S. 26.

7. The enabling fully-paid-up shares or stock to be issued to bearer. Ss. 27—36.

8. The defining the mode in which contracts by a company are to be executed. S. 37.

9. The enforcing the publication of certain contracts in the prospectus. S. 38.

10. The requiring a general meeting of a company to be held within four months after the registration of the memorandum of association. S. 39.

11. The placing a restriction on persons buying shares for the purpose of enabling them to petition for the winding-up of a company. S. 40.

12. The giving jurisdiction in certain cases of winding up companies to county courts. S. 41—46.

These provisions will be discussed in the above order.

1.—*Unlimited Liability of Directors, ss.* 4—8.

Officers capable of being subjected to unlimited liability.

The officers of a company to whom unlimited liability may be attached are either *all* the directors or managers, or one person called in the Act "The Managing Director."

No definition is given, or could conveniently be given, of what constitutes a managing director. In effect, therefore, it would seem that the Act would be complied with if an office be created, called that of managing director, and unlimited liability be attached to the person holding that office, whether such person be or be not the sole person engaged in managing the company.

The question, however, is so doubtful that, in cases

where the managing director is declared to be subject to unlimited liability, his co-directors can scarcely be recommended to take a very prominent part in the administration of the affairs of the company, for fear of bringing on themselves the burden of unlimited liability.

Mode of investing officers with unlimited liability.

The intention of a company to impose unlimited liability on its directors must be declared either by a statement inserted in the memorandum of association, or by a special resolution. A form of statement is given in Appendix II.

Nature of above-mentioned unlimited liability.

The above-mentioned unlimited liability can only be enforced in the event of a company being wound up, and the court deeming it necessary to require unlimited contribution, "in order to satisfy the debts and liabilities of the company, *and* the costs, charges, and expenses of the winding-up."

"And," in this instance, will probably be construed "or," and the effect of the whole provision will be, that the aggregate fortunes of the persons subject to unlimited liability may be considered as a reserve fund in the nature of a guarantee for the solvency of the company, in the event of the corporate assets, including the contributions of the ordinary members, being insufficient to pay the liabilities of the company, or the costs of the winding-up.

Restriction on unlimited liability of directors. s. 5 (2) (3).

The burden would be intolerable if an "unlimited director" were liable for a long time after quitting his office. The Act, therefore, provides, 1st, that he shall not be liable, in his character of director, for more than a year after he has ceased to hold office;

2nd, that he shall not be liable in his character of director in respect of any debt or liability of the company contracted after the period of his holding office.

To prevent a person accepting unwittingly an office involving such serious liabilities, section seven provides, First, that the directors and managers of the company, if any, and the member who proposes any person for election to an office involving unlimited liability, shall add to the proposal a statement that the liability of the person holding the office will be unlimited; Secondly, that before any person accepts the office, or acts therein, the promoters, directors, or managers, and secretary, if any, of the company, or one of them, shall give him notice in writing that his liability will be unlimited. Any person whose duty it is to make the above statement, or to give the above notice, who fails in performance of that duty, will be liable to a penalty not exceeding 100*l.*, and also for any damage which the person to whom the notice ought to have been given may sustain by reason of his default; in other words, will become, in effect, an unlimited director or manager, without any power of directing or managing. S. 7.

It is difficult to imagine any circumstances under which a company can be advised to impose unlimited liability on its directors. The result of such a step would be to drive from the direction men of wealth and position, and to substitute in their places needy adventurers, willing, for a scanty remuneration, to run the, to them, not unfamiliar risk of complete insolvency. Directors of this class, likely to under- Unadvisability of the above-mentioned provision.

take unlimited liability in such a case, would scarcely enhance the credit of the company in the financial world, or command the confidence of shareholders. The true place for unlimited liability in managers is found in the case of limited partnerships formed under the Partnership Law Amendment Act of 1865. There, the persons who conduct the business are, or ought to be, actively engaged in its management, and receive the lion's share of the profits. The limited partners are mere lenders of money, desirous of securing a large amount of interest by the industry of others, and having no substantive control over the business. In such cases, it is reasonable that the one class of partners should be limited in their liability, the other unlimited. In a company all are equally owners of the business, and in theory, at all events, masters. To annex to the burden of management, in such a case, the risk of unlimited liability, seems neither reasonable nor expedient.

2.—*Reduction of Capital and Shares, ss.* 9—20.

Provisions relating to reduction of capital and subdivision of shares.

The object of these provisions is to enable companies, First, to reduce the aggregate amount of their nominal capital, and, Secondly, to diminish the amount of the shares into which that capital is divided. The difference between the two processes is very material.

Suppose a banking company to be formed with a capital of 100,000*l.*, divided into a thousand shares of 100*l.* each; and one hundred shares to have been taken up by one hundred persons. The actual capital of the

company, in such a case, as distinguished from its nominal capital, consists of a liability in one hundred persons to pay 10,000*l.* when called upon to do so, either by the company or by the creditors. The remaining nine hundred shares are unissued, and the capital might be reduced to 10,000*l.* by merely cancelling the nine hundred shares in question. The reduction of capital, in the sense of cancelling unissued shares, is practically no injury to the creditors, and might, if thought expedient, have been allowed in pursuance of a special resolution, or any authoritative indication of the wish of a majority of the shareholders.

Another mode of diminishing the capital is by striking off from each share a certain proportion. For example: In the above case, reduce each of the one hundred shares issued to the denomination of 10*l.* In that case the actual capital of the company consists of a liability in one hundred persons to pay up 1,000*l.* instead of 10,000*l.*; in other words, the security of the creditor is reduced from 10,000*l.* to 1,000*l.*, whilst the persons holding the shares are relieved from a corresponding liability.

At the time of the passing of the Companies Act 1862, it was considered useless to allow a company to cancel its unissued shares, and inexpedient to permit them to tamper with the security of the creditors by striking off any portion of shares not fully paid up.

Certain companies, however, finding, as might naturally have been anticipated, that 100*l.* shares with only a small sum, such as 5*l.*, paid up, and an out-

standing liability of 95*l.*, were not very marketable articles, pressed on the attention of the Select Committee, appointed by the House of Commons to inquire into the position of the Act of 1862, the difficulties in which they were placed, and succeeded in obtaining the introduction into the Act of 1867 of the sections now under consideration.

The scheme is as follows:—A company desirous of reducing its capital must pass a special resolution to that effect. The special resolution forms the groundwork for a petition to the Court of Chancery, praying for an order confirming the reduction. On the hearing of the petition the court is entrusted with the duty of settling a list of creditors, and ascertaining either that they consent to the proposed reduction, or that the debts of dissenting creditors are paid or secured.

The court in effect winds up the company to the extent of ascertaining that the creditors either consent to the reduction, or have virtually ceased to be creditors, by having their debts paid or secured. Moreover, the court marks the operation in which the company has been engaged, by compelling them to add, for a certain time, the words "and reduced," as the last words to its name.

The precautions do not cease even at this point, for there is a reservation of the rights of creditors whose names have not been entered on the list of creditors made by the court, "in consequence of their ignorance of the proceedings taken with a view to such reduction, or of their nature and effect with respect to their claims."

The above provisions may possibly meet the case of

a few companies who have inadvertently commenced business with an excessive capital; but the just and necessary stringency of the conditions under which the reduction of capital can be effected, will probably prevent future companies from imitating the error of starting with an excessive capital, the remedy for that error being little better than the disease it proposes to cure.

III.—*Subdivision of Shares, ss.* 21, 22.

These sections enable companies to subdivide their shares, preserving a proportionate liability in respect of any unpaid calls. For example: Suppose the shares to be 100*l.* each, with 10*l.* paid up, the company may divide each share into ten shares of 10*l.* each, with 1*l.* paid up.

It might be supposed that the security of the creditor is not injured by this process of subdivision, the capital of the company not being diminished, but only differently distributed: it is clear, however, that the character of the constituency of a company may be wholly altered, and the collection of its assets made infinitely more difficult under an enactment which permits a 100*l.* share to be split up into one hundred 1*l.* shares (*a*).

The only statutory requirement is, that all copies of the memorandum of association issued after the

(*a*) See the observations of Turner, L.J., in *Feiling and Rimington's case*, 2 Ch., at p 728.

alteration is made in the denomination of th eshares shall state correctly the new division of the capital.

IV.—*Associations not for Profit*, s. 23.

This provision was originally introduced into the Consolidating Acts of 1859 and 1860, but was omitted in the Bill of 1862. It is a most useful provision. It enables associations that are not engaged in mercantile pursuits to become incorporated under the Act of 1862 without annexing to their names the inappropriate term "limited."

In order to acquire this privilege, an association must prove to the Board of Trade that it is formed for the purpose of promoting commerce, art, science, religion, charity, or some other useful object, and that it is the intention of such association to apply the profits (if any) or other income of the association in promoting its objects, and to prohibit the payment of any dividend to the members of the association, and thereupon the Board of Trade may, by licence, under the hand of one of the secretaries, or assistant secretaries, direct such association to be registered with limited liability, without the addition of the word "limited" to its name, and such association may be registered accordingly, and enjoy all the privileges of a limited company.

Associations of the above description are not, by the general law, partnerships, or subject to the evils of unlimited liability. It is a misapprehension, therefore, to object, as some writers have done, that this section confers

undue privileges on charitable or quasi-charitable societies. It merely enables them to adopt the complete organisation of a corporate company, instead of the difficult and complex condition of a body that is neither a corporation nor a partnership.

Again, the argument that the creditor is likely to be misled by the omission of the word "limited," is of little weight. Indeed, the question could never have arisen at all, if, on the introduction of the principle of limited liability, the framers of the Acts for carrying that principle into general effect, had not been obliged to make a concession to the fears of their opponents, and to require the addition of the word "limited" to the name of every company formed with limited liability under these Acts.

Forms constituting an association capable of availing itself of the provisions of this section will be found in Appendix II.

V.—*Calls upon Shares, ss.* 24—25.

Section 24 provides that the Act of 1862 shall not be deemed to prevent any company, if authorised so to do by its regulations, from—

(1.) Making arrangements on the issue of shares for a difference between the holders of such shares in the amount of calls to be paid, and in the time of payment of such calls:

(2.) Accepting from any member of the company who assents thereto the whole or a part of the

amount remaining unpaid on any share or shares held by him, either in discharge of the amount of a call payable in respect of any other share or shares held by him, or without any call having been made:

(3.) Paying dividend in proportion to the amount paid up on each share in cases where a larger amount is paid up on some shares than on others.

In other words, the section provides that the Act of 1862 shall not be deemed to do what it most certainly does not, and never was intended to do.

Section 25 is explained in the note upon it.

VI.—*Transfer of Shares, s.* 26.

This section requires a company, on the application of a transferor of a share or interest in the company, to enter in its register of members the name of the transferee of such share or interest, in the same manner, and subject to the same conditions, as if the application for such entry was made by the transferee.

This section can only mean, that on the presentation of the deed of transfer, or a duplicate thereof, by the transferor, the company must register the transfer. It is difficult to see the necessity for an enactment for such a purpose.

VII.—*Share Warrants to Bearer, ss.* 27—36.

These sections enable companies limited by shares to issue share warrants in respect of fully paid-up shares or stock, rendering such shares or stock transferable

by delivery without a formal transfer. The warrants may have annexed to them coupons entitling the bearer to receive the dividends payable in respect of such shares or stock.

VIII—*Contracts, s.* 37.

This is a restoration of section 41 of the Act of 1856 (compare s. 97 of the Companies Clauses Act 1845), which was omitted in the Act of 1862.

It enacts that a company shall be bound by the acts of its duly authorised agents, done in such manner as would bind private persons.

The necessity for this enactment will appear from the observations at p. 120.

IX.—*Publication of Contracts in Prospectus, s.* 38.

This section provides, (1), that every prospectus of a company; (2), that every notice inviting persons to subscribe for shares in any joint-stock company, shall be deemed fraudulent on the part of the promoters, directors, and officers of the company knowingly issuing the same, as regards any person taking shares in the company on the faith of such prospectus, unless it specifies the dates and the names of the parties to any contract entered into by the company, or the promoters, directors, or trustees thereof, before the issue of such prospectus or notice, whether subject to adoption by the directors, or the company, or otherwise; or unless the person taking shares has notice of the contract.

The section *primâ facie* extends to every company,

whether formed or not under the Act of 1862, to every contract, however trivial; and to every notice inviting persons to subscribe for shares, whether issued by a new company in respect of its original shares, or by a company that has been established for half a century in respect of shares in a newly created capital.

The courts have, however, placed such a construction on it as to remove the apprehension that might otherwise have been felt as to its operation (*a*).

X.—*Meetings*, *s.* 39.

The Act of 1862 (s. 49) requires a company to hold a general meeting once at the least in every year. This section enacts, in addition, that in the case of a company formed under that Act, a general meeting shall be held within four months after the registration of the memorandum of association.

XI.—*Petition in Winding-up*, *s.* 40.

To prevent the mischievous and not uncommon practice of speculators buying shares in failing companies, with a view to wind them up, and thus either get their shares taken off their hands at an enhanced price, or partake in the plunder of a winding-up, this section provides that no contributory of a company shall be capable of presenting a petition for winding up such company, unless the members of the company are

(*a*) See note to the section.

reduced in number to less than seven, or unless the shares in respect of which he is a contributory, or some of them, either were originally allotted to him, or have been held by him, and registered in his name, for a period of at least six months during the eighteen months previously to the commencement of the winding up, or have devolved upon him through the death of a former holder.

Provided that where a share has, during the whole or any part of the six months, been held by or registered in the name of the wife of a contributory either before or after her marriage, or by or in the name of any trustee or trustees for such wife, or for the contributory, such share shall, for the purposes of this section, be deemed to have been held by and registered in the name of the contributory.

XII.—*Jurisdiction of County Court in Winding-up, ss.* 41—46.

Section 81 of the Companies Act, 1862, enables the Court of Chancery to refer winding-up cases to the Bankruptcy Court. These sections add a power to refer such cases to the County Courts.

APPENDIX I.

PART I.

THE COMPANIES ACTS.

THE COMPANIES ACT, 1862, 25 & 26 Vict., c. 89.

THE COMPANIES ACT, 1867, 30 & 31 Vict., c. 131.

THE JOINT STOCK COMPANIES ARRANGEMENT ACT, 1870, 33 & 34 Vict., c. 104.

THE COMPANIES ACT 1862.

[NOTE.—In the former editions of this work will be found tables shewing the correspondence between the sections of the Act of 1862 and the Acts of 1856, 1857, and 1858. It was deemed unnecessary to insert these tables in the present edition.]

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25 & 26 VICT. c. 89.

An Act for the Incorporation, Regulation, and Winding up of Trading Companies and other Associations.

[7th August, 1862.]

WHEREAS it is expedient that the laws relating to the Incorporation, Regulation, and Winding up of Trading Companies and other associations, should be consolidated and amended: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal and Commons in this present Parliament assembled, and by the authority of the same, as follows:

Preliminary.

I. This Act may be cited for all purposes as "The Companies Act, 1862." Short title

II. This Act, with the exception of such temporary enactment as is hereinafter declared to come into operation immediately, (*a*) shall not come into operation until the second day of November one thousand eight hundred and sixty-two, and the time at which it comes into operation is hereinafter referred to as the commencement of this Act. Commencement of Act.

(*a*) Section 209.

Definiton of insurance company.

III. For the purposes of this Act a company that carries on the business of insurance in common with any other business or businesses shall be deemed to be an insurance company.

The courts of law have raised doubts as to what is an insurance company. *Lond. and Provincial Provident Society* v. *Ashton*, 11 W. R. 152, 12 C. B., N. S. 709. This enactment was introduced to obviate all question as to what the Act means when it uses the term "insurance company."

See below, s. 44.

Prohibition of partnerships exceeding certain number.

IV. No company association or partnership consisting of more than ten persons shall be formed, after the commencement of this Act, for the purpose of carrying on the business of banking, unless it is registered as a company under this Act, or is formed in pursuance of some other Act of Parliament, or of letters patent; and no company association or partnership consisting of more than twenty persons, shall be formed after the commencement of this Act, for the purpose of carrying on any other business that has for its object the acquisition of gain by the company, association or partnership or by the individual members thereof, unless it is registered as a company under this Act, or is formed in pursuance of some other Act of Parliament, or of letters patent, or is a company engaged in working mines within and subject to the jurisdiction of the Stannaries.

This section renders banking partnerships consisting of more than ten persons, and all other partnerships consisting of more than twenty persons, illegal.

The words "or by the individual members thereof," are intended to include companies formed on what is called the mutual principle.

The number ten, as respects banking, was insisted on by the London bankers at the time of the passing of the Joint Stock Banking Companies Act, 1857. The number twenty, as respects other companies, was retained in the Joint Stock Companies Act, 1856, as having been the number selected by the Joint Stock Companies Act, 1844.

As to banking partnerships see below, schedule 3, part 2

Farming is a business within this section, *Harris* v. *Amery*, L. R., 1 C. P. 148.

V. This Act is divided into nine parts, relating to the following subject matters: Division of Act

The First Part,—to the constitution and incorporation of companies and associations under this Act:

The Second Part,—to the distribution of the capital and liability of members of companies and associations under this Act:

The Third Part,—to the management and administration of companies and associations under this Act:

The Fourth Part,—to the winding-up of companies and associations under this Act:

The Fifth Part,—to the Registration office.

The Sixth Part,—to application of this Act to companies registered under the Joint Stock Companies Acts:

The Seventh Part,—to companies authorized to register under this Act:

The Eighth Part,—to application of this Act to unregistered companies:

The Ninth Part,—to repeal of Acts and temporary provisions.

PART I.

For general description of this Part see above, p. 128.

CONSTITUTION AND INCORPORATION OF COMPANIES AND ASSOCIATIONS UNDER THIS ACT.

Practical Rules for forming a Company.

Companies of three descriptions may be formed under the Act; 1, a company limited by shares; 2, a company limited by guarantee; 3, an unlimited company. The differences between these companies are fully explained in the introductory chapter, and in chapter I. of Part II. (p. 128).

If a company limited by shares is to be formed, the following steps must be taken:—A form of memorandum of association must be procured, and the blank be filled in according to circumstances (see s. 8, Form A. in Sch. II; the observations on the memorandum of association at page 180, and the forms in Appendix II.). As many persons as are desirous of setting up the company may subscribe their names and addresses, and enter opposite their names the number of shares they are willing to take. All, however, that the Act requires is that the number of subscribers should not be less than seven; that every subscriber should take at least one share; and that his execution of the memorandum should be attested by at least one witness. The memorandum must be stamped with a deed stamp, and will then be complete and fit for registration.

Before registration, Table A. in Sch. I. should be carefully read, and if the regulations therein contained suit the company, the memorandum of association may be registered and the company formed at once. If Table A be not approved, articles of association must be prepared and printed, and registered with the memorandum. The memorandum of association, accompanied with the articles of

association, if any, will be delivered to the registrar in England, Scotland, or Ireland, according to the country in which the company is established. The fees to be paid are regulated by Table B. in Sch. I., and are much reduced as compared with the fees payable under the Act of 1856. Upon payment of the fees, and delivery of the memorandum and articles (if any), the registrar will grant a certificate of incorporation, and the registration will be complete.

Suppose a company limited by guarantee to be preferred. The memorandum will be in the form required by s. 9, and shown in Forms B. and C. in Sch. II. Articles of association *must* be filed; and if the company have a capital divided into shares, the amount of capital *must* be stated in the articles; if it have no such capital, the number of members with which it proposes to be registered *must* be substituted in the articles for the amount of capital (s. 14). With the above exceptions, the proceedings in the case of a company limited by guarantee are the same as in the case of a company limited by shares.

The form of memorandum of an unlimited company will appear from s. 10, and the Form D. in Sch. II. The observations made with respect to the necessity of filing articles of association apply to an unlimited company no less than to a company limited by guarantee (s. 14).

Memorandum of Association.

Mode of forming company.

VI. Any seven or more persons associated for any lawful purpose may, by subscribing their names to a memorandum of association, and otherwise complying with the requisitions of this Act in respect of registration, form an incorporated company, with or without limited liability.

Forms of memorandum, infra, Schedule II.; and for additional precedents see App. II.

Foreigners on complying with the requisitions of the Act may obtain incorporation under it, though the principal

business of the company seems intended to be transacted abroad, and though some of the shares are not in conformity with the Act. *Princess of Reuss* v. *Bos*, L. R., 5 H. L. 176. See also *Union Bank of Calcutta*, 3 De G. & Sm. 253.

Mode of limiting liability of members.

VII. The liability of the members of a company formed under this Act may, according to the memorandum of association, be limited either to the amount, if any, unpaid on the shares respectively held by them, or to such amount as the members may respectively undertake by the memorandum of association to contribute to the assets of the company in the event of its being wound up.

Memorandum of association of a company limited by shares

VIII. Where a company is formed on the principle of having the liability of its members limited to the amount unpaid on their shares, hereinafter referred to as a company limited by shares, the memorandum of association shall contain the following things; (that is to say,)

(1.) The name of the proposed company, with the addition of the word "Limited" as the last word in such name:

New Brunswick and Canada Rail. and Land Co. v. *Boore* 3 H. & N. 249.

(2.) The part of the United Kingdom, whether England, Scotland, or Ireland, in which the registered office of the company is proposed to be situate:

(3.) The objects for which the proposed company is to be established:

(4.) A declaration that the liability of the members is limited :

(5.) The amount of capital with which the company proposes to be registered, divided into shares of a certain fixed amount :

Subject to the following regulations :

(1.) That no subscriber shall take less than one share :

(2.) That each subscriber of the memorandum of association shall write opposite to his name the number of shares he takes.

Sch. II. Form A.

Memorandum of association of a company limited by guarantee.

IX. Where a company is formed on the principle of having the liability of its members limited to such amount as the members respectively undertake to contribute to the assets of the company in the event of the same being wound up, hereinafter referred to as a company limited by guarantee, the memorandum of association shall contain the following things; (that is to say,)

(1.) The name of the proposed company, with the addition of the word "Limited" as the last word in such name :

(2.) The part of the United Kingdom, whether England, Scotland, or Ireland, in which the registered office of the company is proposed to be situate :

(3.) The objects for which the proposed company is to be established :

(4.) A declaration that each member undertakes

to contribute to the assets of the company, in the event of the same being wound up during the time that he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before the time at which he ceases to be a member, and of the costs charges and expenses of winding up the company, and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required, not exceeding a specified amount.

If a company limited by guarantee or unlimited has a capital divided into shares, each subscriber of the memorandum must take at least one share, and write opposite to his name in the memorandum of association the number of shares he takes; s. 14, *ad fin.*

Sch. II. Forms B. & C.

Memorandum of association of an unlimited company

X. Where a company is formed on the principle of having no limit placed on the liability of its members, hereinafter referred to as an unlimited company, the memorandum of association shall contain the following things; (that is to say):

(1.) The name of the proposed company:

(2.) The part of the United Kingdom, whether England, Scotland, or Ireland in which the registered office of the company is proposed to be situate:

(3.) The objects for which the proposed company is to be established.

See note to s. 9. Sch. II. Form D.

XI. The memorandum of association shall bear the same stamp as if it were a deed, and shall be signed by each subscriber in the presence of, and be attested by, one witness at the least, and that attestation shall be a sufficient attestation in Scotland as well as in England and Ireland: it shall, when registered, bind the company and the members thereof to the same extent as if each member had subscribed his name and affixed his seal thereto, and there were in the memorandum contained, on the part of himself his heirs executors and administrators, a covenant to observe all the conditions of such memorandum, subject to the provisions of this Act.

Stamp, signature, and effect of memorandum of association.

XII. Any company limited by shares may so far modify the conditions contained in its memorandum of association, if authorized to do so by its regulations as originally framed, or as altered by special resolution in manner hereinafter mentioned, (*a*) as to increase its capital, by the issue of new shares of such amount as it thinks expedient, or to consolidate and divide its capital into shares of larger amount than its existing shares, or to convert its paid-up shares into stock, but, save as aforesaid, and save as is hereinafter provided in the case of a change of name, no alteration shall be made by any company in the conditions contained in its memorandum of association.

Power of certain companies to alter memorandum of association.

This power is restricted to a company limited by shares. It is not required in the case of other companies, since the provisions as to capital are, in the case of such companies, contained in the articles of association, and, as a conse-

(*a*) s. 51.

quence, may be altered in the same manner as the other regulations contained in those articles.

It will be observed that "conditions" is the term applied to the requirements of the memorandum of association; "regulations" to the provisions of Table A, or of articles of association.

No alteration in the memorandum not authorized by this section can be made; not even (apparently) in pursuance of an express power in the memorandum. *Feilings and Rimington's case*, 2 Ch. 714.

A further power of modifying the memorandum is, however, given by the Act of 1867, which enables a limited company to make the liability of its directors unlimited, and enables companies limited by shares to reduce their capital and shares, and to subdivide their shares (30 & 31 Vict c. 131, s. 8, ss. 9-20, and 21-2).

Under this section directors may, after a special resolution to increase capital by an issue of new shares has been duly passed and confirmed, at once issue the shares. But where a company has not power by its original regulations to *reduce* capital, two special resolutions are requisite under s. 9 of the Act of 1867. *Campbell's case*, 9 Ch. 1, in effect overruling the opinion expressed by Kelly, C.B., in *Bank of Hindustan* v. *Alison*, L. R., 6 C. P. 222; *W. India Steamship Co.*, 9 Ch. 11, *n*.

Unauthorized issue of new shares by directors held to be confirmed by company. *Sewell's case*, 3 Ch. 131.

As to an issue of half shares in absence of a statutory power, and as to estoppel by receipt of dividend, see *Hull Flax Co.* v. *Wellesley*, 6 H. & N. 38.

See ss. 28, 29, 50.

Power of companies to change name.

XIII. Any company under this Act, with the sanction of a special resolution of the company passed in manner hereinafter mentioned, and with the approval of the Board of Trade, testified in writing under the

hand of one of its secretaries or assistant secretaries, may change its name; and upon such change being made the registrar shall enter the new name on the register in the place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case; but no such alteration of name shall affect any rights or obligations of the company, or render defective any legal proceedings instituted or to be instituted by or against the company, and any legal proceedings may be continued or commenced against the company by its new name that might have been continued or commenced against the company by its former name.

The issue of the certificate of incorporation is necessary to complete the change of name. *Shackleford, Ford, & Co.* v. *Dangerfield*, L. R., 3 C. P. 407.

Articles of Association.

Regulations to be prescribed by articles of association.

XIV. The memorandum of association may, in the case of a company limited by shares, and shall, in the case of a company limited by guarantee or unlimited, be accompanied, when registered, by articles of association signed by the subscribers to the memorandum of association, and prescribing such regulations for the company as the subscribers to the memorandum of association deem expedient: the articles shall be expressed in separate paragraphs, numbered arithmetically: they may adopt all or any of the provisions contained in the Table marked A in the first schedule hereto; they shall, in the case of a company, whether

limited by guarantee or unlimited, that has a capital divided into shares, state the amount of capital with which the company proposes to be registered; and in the case of a company, whether limited by guarantee or unlimited, that has not a capital divided into shares, state the number of members with which the company proposes to be registered, for the purpose of enabling the registrar to determine the fees payable on registration: in a company limited by guarantee or unlimited, and having a capital divided into shares, each subscriber shall take one share at the least, and shall write opposite to his name in the memorandum of association the number of shares he takes.

See s. 16., Sch. II., Forms B., C., D.; and for additional precedents see Appendix II.

Application of Table A.

XV. In the case of a company limited by shares, if the memorandum of association is not accompanied by articles of association, or in so far as the articles do not exclude or modify the regulations contained in the Table marked A in the first schedule hereto, the last-mentioned regulations shall, so far as the same are applicable, be deemed to be the regulations of the company in the same manner and to the same extent as if they had been inserted in articles of association, and the articles had been duly registered.

Table B, under the Act of 1856, has in several cases been treated as a code of rules made obligatory by Act of Parliament on the company. The exact contrary is the fact: Table B, under that Act, and Table A, under this Act, are simply model forms which a company shows an intention to adopt if it fail to register articles of association. They

have no parliamentary sanction whatever, and bind the company to the same extent only as articles of association registered by the company bind it.

The power to alter the regulations contained in Table A, or in articles of association, is given by s. 50.

The existence of this power would seem altogether to preclude the interference of a court of equity in the internal affairs of a company, except in cases where the company exceeds the *objects*, as contradistinguished from the *powers*, of the corporation (see observations, p. 114).

Stamp, signature, and effect of articles of association.

XVI. The articles of association shall be printed, they shall bear the same stamp as if they were contained in a deed, and shall be signed by each subscriber in the presence of, and be attested by, one witness at the least, and such attestation shall be a sufficient attestation in Scotland as well as in England and Ireland; when registered, they shall bind the company and the members thereof to the same extent as if each member had subscribed his name and affixed his seal thereto, and there were in such articles contained a covenant on the part of himself his heirs executors and administrators, to conform to all the regulations contained in such articles, subject to the provisions of this Act; and all moneys payable by any member to the company, in pursuance of the conditions and regulations of the company or any of such conditions or regulations, shall be deemed to be a debt due from such member to the company, and in England and Ireland to be in the nature of a specialty debt.

"And all moneys payable," &c. How far a statutory obligation to pay creates a specialty debt, see *Cork and*

Bandon Rail. Co. v. *Goode*, 13 C. B. 826, 17 Jur. 555. It seems very difficult to reconcile with that case the decision in *Welland Rail. Co.* v. *Blake*, 6 H. & N. 410, 7 Jur. N. S. 373, except on the most unsatisfactory ground that a colonial statute differs from an imperial Act in the nature of the obligation which it creates.

General Provisions.

Registration of memorandum of association, and articles of association with fees as in Table B.

XVII. The memorandum of association and the articles of association, if any, shall be delivered to the registrar of joint-stock companies hereinafter mentioned, who shall retain and register the same: there shall be paid to the registrar by a company having a capital divided into shares, in respect of the several matters mentioned in the Table marked B in the first schedule hereto, the several fees therein specified, or such smaller fees as the Board of Trade may from time to time direct; and by a company not having a capital divided into shares, in respect of the several matters mentioned in the Table marked C in the first schedule hereto, the several fees therein specified, or such smaller fees as the Board of Trade may from time to time direct: all fees paid to the said registrar in pursuance of this Act shall be paid into the receipt of Her Majesty's Exchequer, and be carried to the account of the Consolidated Fund of the United Kingdom of Great Britain and Ireland.

Effect of registration

XVIII. Upon the registration of the memorandum of association, and of the articles of association in cases where articles of association are required by this Act or by the desire of the parties to be registered, the

registrar shall certify under his hand that the company is incorporated, and in the case of a limited company that the company is limited: the subscribers of the memorandum of association, together with such other persons as may from time to time become members of the company, shall thereupon be a body corporate by the name contained in the memorandum of association, capable forthwith of exercising all the functions of an incorporated company, and having perpetual succession and a common seal, with power to hold lands, but with such liability on the part of the members to contribute to the assets of the company in the event of the same being wound up as is hereinafter mentioned: a certificate of the incorporation of any company given by the registrar shall be conclusive evidence that all the requisitions of this Act in respect of registration have been complied with.

The "liability to contribute to the assets of the company in the event of its being wound up," is defined by s. 38.

It will be observed that the incorporation under this Act is absolute, not qualified, and differs in no respect from incorporation under private Acts of Parliament.

The power to hold lands is unrestricted, except in the case of the charitable companies mentioned in s. 21.

As to conclusiveness of certificate of incorporation, *Peel's case*, 2 Ch. 674. *Oakes v. Turquand*, L. R. 2 H. L. at p. 354.

Copies of memorandum and articles to be given to members.

XIX. A copy of the memorandum of association having annexed thereto the articles of association, if any, shall be forwarded to every member at his request on payment of the sum of one shilling or such less sum as may be prescribed by the company for each copy;

and if any company makes default in forwarding a copy of the memorandum of association and articles of association, if any, to a member in pursuance of this section, the company so making default shall for each offence incur a penalty not exceeding one pound.

Prohibition against identity of names in companies.

XX. No company shall be registered under a name identical with that by which a subsisting company is already registered, or so nearly resembling the same as to be calculated to deceive, except in a case where such subsisting company is in the course of being dissolved, and testifies its consent in such manner as the registrar requires; and if any company, through inadvertence or otherwise, is, without such consent as aforesaid, registered by a name identical with that by which a subsisting company is registered, or so nearly resembling the same as to be calculated to deceive, such first-mentioned company may, with the sanction of the registrar, change its name, and upon such change being made the registrar shall enter the new name on the register in the place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case; but no such alteration of name shall affect any rights or obligations of the company, or render defective any legal proceedings instituted or to be instituted by or against the company, and any legal proceedings may be continued or commenced against the company by its new name, that might have been continued or commenced against the company by its former name.

The Court of Chancery protects a trader in the use of a trade mark or a trade name, by granting an injunction

against any other trader using the same mark or name. This section was introduced for the purpose of enabling a company that has adopted the name of another company to comply with the order of the Court without dissolving itself, which it must otherwise have done had the Court of Chancery prohibited it from using its registered name, on the ground that the right to use such name was vested in some other company.

Injunction refused. *Lond. Assur. Corporation* v. *Lond. and Westminster Assur. Corporation, Limited,* 9 Jur. (N. S.) 843, 32 L. J. (N. S.) Ch. 664. A company cannot appropriate the exclusive use of a name descriptive of locality; *e. g.*, "Colonial," *Col. Life Assur. Co.* v. *Home and Col. Assur. Co. Limited,* 33 Beav. 548.

Prohibition against certain companies holding land.

XXI. No company formed for the purpose of promoting art, science, religion, charity, or any other like object, not involving the acquisition of gain by the company or by the individual members thereof, shall, without the sanction of the Board of Trade, hold more than two acres of land; but the Board of Trade may, by licence under the hand of one of their principal secretaries or assistant secretaries, empower any such company to hold lands in such quantity and subject to such conditions as they think fit.

There is no pretence for saying that a company under the Act, and not within the provisions of this section, requires a licence to hold land. See section 18.

For form of licence, Sch. II., Form F.

PART II.

For general description of this part see above, p. 151.

DISTRIBUTION OF CAPITAL AND LIABILITY OF MEMBERS OF COMPANIES AND ASSOCIATIONS UNDER THIS ACT.

Distribution of Capital.

Nature of interest in company.

XXII. The shares or other interest of any member in a company under this Act shall be personal estate, capable of being transferred in manner provided by the regulations of the company, and shall not be of the nature of real estate, and each share shall, in the case of a company having a capital divided into shares, be distinguished by its appropriate number.

The words, "or other interest," include the interest of a member of a mutual company in which there are no shares. That a member of a company has not any personal interest in the lands of the company, so as to entitle him to vote at parliamentary elections; see *Bulmer* v. *Norris*, 9 C. B., N. S. 19; 30 L. J., C. P. 25; *Bennett* v. *Blain*, 15 C. B., N. S. 581; 33 L. J., C. P. 63.

As to transfers, *supra*, p 58, and s. 24.

Definition of "Member."

XXIII. The subscribers of the memorandum of association of any company under this Act shall be deemed to have agreed to become members of the company whose memorandum they have subscribed, and upon the registration of the company shall be entered as

members on the register of members hereinafter mentioned; and every other person who has agreed to become a member of a company under this Act, and whose name is entered on the register of members, shall be deemed to be a member of the company.

This section varies in expression from the corresponding section, 19, in the Act of 1856, in so far as that section contains a definition of shareholder:—"agreement to become a member" being substituted for "acceptance of shares," in order to escape the effect of the extraordinary decision in *New Brunswick and Canada Rail. and Land Co.* v. *Muggeridge*, 4 H. & N. 160, 5 Jur., N. S. 1131; 7 Jur. N. S. 132; but see now *Bog Lead Mining Co.* v. *Montague* 10 C. B., N. S. 481; 8 Jur., N. S. 310.

As to what amounts to an agreement to take shares, see p. 37.

The power to place persons who have agreed to take shares on the register, is contained in sections 35, 98, 133 (8).

So much of sect. 19 of the Act of 1856 as relates to the non-entry of trusts on the register, will be found in sect. 30.

XXIV. Any transfer of the share or other interest of a deceased member of a company under this Act, made by his personal representative, shall, notwithstanding such personal representative may not himself be a member, be of the same validity as if he had been a member at the time of the execution of the instrument of transfer. Transfer by personal representative

An executor obtaining a transfer into his own name of the shares of his testator, might become liable to creditors in respect of the debts of the company. On the other hand, a difficulty frequently arises from the reluctance of the company to allow a transfer of the

shares without the entry of the executor on the register. This section was introduced to remove the difficulty by an express enactment that a transfer by a personal representative who is not a member shall be of the same validity as if he were a member. See Table A (12)—(16).

Register of members

XXV. Every company under this Act shall cause to be kept in one or more books a register of its members, and there shall be entered therein the following particulars:—

(1.) The names and addresses and the occupations, if any of the members of the company, with the addition, in the case of a company having a capital divided into shares, of a statement of the shares held by each member, distinguishing each share by its number: and of the amount paid or agreed to be considered as paid on the shares of each member:

(2.) The date at which the name of any person was entered in the register as a member:

(3.) The date at which any person ceased to be a member:

And any company acting in contravention of this section shall incur a penalty not exceeding five pounds for every day during which its default in complying with the provisions of this section continues, and every director or manager of the company, who shall knowingly and wilfully authorize or permit such contravention, shall incur the like penalty.

See p. 151, *Weikersheim's case*, 8 Ch. 831.

Annual list of members.

XXVI. Every company under this Act, and having a capital divided into shares, shall make, once at least

in every year, a list of all persons who, on the fourteenth day succeeding the day on which the ordinary general meeting, or if there is more than one ordinary meeting in each year, the first of such ordinary general meetings is held, are members of the company; and such list shall state the names addresses and occupations of all the members therein mentioned, and the number of shares held by each of them, and shall contain a summary specifying the following particulars:—

(1.) The amount of the capital of the company, and the number of shares into which it is divided:

(2.) The number of shares taken from the commencement of the company up to the date of the summary:

(3.) The amount of calls made on each share:

(4.) The total amount of calls received:

(5.) The total amount of calls unpaid:

(6.) The total amount of shares forfeited:

(7.) The names addresses and occupations of the persons who have ceased to be members since the last list was made, and the number of shares held by each of them.

The above list and summary shall be contained in a separate part of the register, and shall be completed within seven days after such fourteenth day as is mentioned in this section, and a copy shall forthwith be forwarded to the registrar of joint stock companies.

See p. 152, and s. 45.

Penalty on company, &c., not keeping a proper register

XXVII. If any company under this Act, and having a capital divided into shares, makes default in complying with the provisions of this Act with respect to forwarding such list of members or summary as is hereinbefore mentioned to the registrar, such company shall incur a penalty not exceeding five pounds for every day during which such default continues, and every director and manager of the company who shall knowingly and wilfully authorize or permit such default shall incur the like penalty.

Company to give notice of consolidation or of conversion of capital into stock.

XXVIII. Every company under this Act, having a capital divided into shares, that has consolidated and divided its capital into shares of larger amount than its existing shares, or converted any portion of its capital into stock, shall give notice to the registrar of joint stock companies of such consolidation division or conversion, specifying the shares so consolidated divided or converted.

See section 12, and note.

Effect of conversion of shares into stock

XXIX. Where any company under this Act, and having a capital divided into shares, has converted any portion of its capital into stock, and given notice of such conversion to the registrar, all the provisions of this Act which are applicable to shares only shall cease as to so much of the capital as is converted into stock; and the register of members hereby required to be kept by the company, and the list of members to be forwarded to the registrar, shall show the amount of stock held by each member in the list instead of the amount of shares and the particulars relating to shares hereinbefore required.

XXX. No notice of any trust expressed implied or constructive, shall be entered on the register, or be receivable by the registrar, in the case of companies under this Act and registered in England or Ireland. Entry of trusts on register

A trustee whose name is on the register is as against the company and as against creditors liable in respect of the shares in his name (*Leifchild's case*, 1 Eq. 231; *Chapman and Barker's case*, 3 Eq. 361; *King's case*, 6 Ch. 196), though entitled to indemnity from his *cestui que trust*; (*Chapman and Barker's case*, ubi supra; *National Financial Co.*, 3 Ch. 791; and see *Hemming* v. *Maddick*, 7 Ch. 395). But where a transfer to or placing of shares in the name of a trustee is merely colourable or fraudulent the real owner is liable to have his name substituted for that of his nominee. See cases, supra, p. 83-4, and the judgment in *King's case*, 6 Ch. 196, distinguished from *Cox's case*, 12 W. R. 92. 33 L. J., Ch. 145.

Trusts will not be recognized in case of a charging order made under 1 & 2 Vict. 3. 110, s. 14; *Cragg* v. *Taylor*, L. R., 1 Ex. 148, and see *ib.* 2 Ex. 131; *Gill* v. *Continental Gas Co.*, L. R., 7 Ex. 332.

XXXI. A certificate under the common seal of the company specifying any share or shares or stock held by any member of a company, shall be *primâ facie* evidence of the title of the member to the share or shares or stock therein specified. Certificate of shares or stock

As to estoppel of company which has granted a certificate on a forged transfer, *Bahia and San Francisco Rail. Co.*, L. R., 3 Q. B. 584, and see *Hart* v. *Frontino, &c., Co.*, L. R., 5 Ex. 111. *R.* v. *Shropshire Union Co.* L. R. 8. B. 420.

XXXII. The register of members, commencing from Inspection of register

the date of the registration of the company, shall be kept at the registered office of the company hereinafter mentioned; except when closed as hereinafter mentioned, it shall during business hours, but subject to such reasonable restrictions as the company in general meeting may impose, so that not less than two hours in each day be appointed for inspection, be open to the inspection of any member gratis, and to the inspection of any other person on the payment of one shilling, or such less sum as the company may prescribe, for each inspection; and every such member or other person may require a copy of such register, or of any part thereof, or of such list or summary of members as is hereinbefore mentioned, on payment of sixpence for every hundred words required to be copied: if such inspection or copy is refused, the company shall incur for each refusal a penalty not exceeding two pounds, and a further penalty not exceeding two pounds for every day during which such refusal continues, and every director and manager of the company who shall knowingly authorize or permit such refusal shall incur the like penalty; and in addition to the above penalty, as respects companies registered in England and Ireland, any judge sitting in chambers, or the Vice-Warden of the Stannaries, in the case of companies subject to his jurisdiction, may by order compel an immediate inspection of the register.

Power to close register.

XXXIII. Any company under this Act may, upon giving notice by advertisement in some newspaper circulating in the district in which the registered office of the company is situated, close the register of mem-

bers for any time or times not exceeding in the whole thirty days in each year.

Notice of increase of capital and of members to be given to registrar.

XXXIV. Where a company has a capital divided into shares, whether such shares may or may not have been converted into stock, notice of any increase in such capital beyond the registered capital, and where a company has not a capital divided into shares, notice of any increase in the number of members beyond the registered number, shall be given to the registrar in the case of an increase of capital, within fifteen days from the date of the passing of the resolution by which such increase has been authorised, and in the case of an increase of members within fifteen days from the time at which such increase of members has been resolved on or has taken place, and the registrar shall forthwith record the amount of such increase of capital or members: if such notice is not given within the period aforesaid the company in default shall incur a penalty not exceeding five pounds for every day during which such neglect to give notice continues, and every director and manager of the company who shall knowingly and wilfully authorise or permit such default shall incur the like penalty.

Remedy for improper entry or omission of entry in register.

XXXV. If the name of any person is, without sufficient cause, entered in or omitted from the register of members of any company under this Act, or if default is made or unnecessary delay takes place in entering on the register the fact of any person having ceased to be a member of the company, the person or member

aggrieved, or any member of the company, or the company itself, may, as respects companies registered in England or Ireland, by motion in any of Her Majesty's superior Courts of law or equity, or by application to a judge sitting in chambers, or to the Vice-Warden of the Stannaries in the case of companies subject to his jurisdiction, and as respects companies registered in Scotland by summary petition to the Court of Session, or in such other manner as the said Courts may direct, apply for an order of the Court that the register may be rectified; and the Court may either refuse such application, with or without costs, to be paid by the applicant, or it may, if satisfied of the justice of the case, make an order for the rectification of the register, and may direct the company to pay all the costs of such motion, application, or petition, and any damages the party aggrieved may have sustained: the Court may in any proceeding under this section decide on any question relating to the title of any person who is a party to such proceeding to have his name entered in or omitted from the register, whether such question arises between two or more members or alleged menbers, or between any members or alleged members and the company, and generally the Court may in any such proceeding decide any question that it may be necessary or expedient to decide for the rectification of the register; provided that the Court, if a Court of common law, may direct an issue to be tried, in which any question of law may be raised, and a writ of error or appeal, in the manner directed by The Common Law Procedure Act, 1854, shall lie.

The 25th section of the Act of 1856 provided that if the name of any person was without sufficient cause entered or omitted to be entered in the register of shareholders, any one of Her Majesty's superior courts might, on motion of any person aggrieved, rectify the register. Under that section a doubt was raised whether the court could, on motion, decide between the rights of hostile applicants to be registered. See *Brit. Sugar Refining Co.*, 3 K. & J. 408.

With a view of removing all doubt as to the jurisdiction of the court to decide any question whatever that might be required to be decided for the purpose of rectifying the register, the words were added that "the court may in any proceeding decide on any question relating to the title of any person who is a party to such proceeding to have his name entered in or omitted from the register, whether such question arises between two or more members or alleged members, or between any members or alleged members and the company; and generally the court may in any such proceeding decide any question that it may be necessary or expedient to decide for the rectification of the register."

Notwithstanding these words, conflict of opinion has existed as to the extent of the jurisdiction. In *Ward* and *Henry's case*, 2 Ch. 431, the Lord Justice Turner (see also his judgment in *Stewart's case*, 1 Ch. 574) considered that the jurisdiction is general, but that the court has discretion as to its exercise, Lord Cairns, on the other hand, held that the jurisdiction is confined to cases of default by the company. The question cannot be regarded as finally settled. V.-C. Malins has on several occasions expressed a strong opinion in favour of the liberal construction of the section (*Ward and Garfit's case*, 4 Eq. 189; *Musgrave and Hart's case*, 5 Eq. 194, &c.): while in the recent case of *Ex parte Sargent*, 17 Eq. 273, the present M. R. (Jessel) declared his preference for the view of Lord Cairns; and subsequently adopted the observations of Channell, B., in *Ex parte Ward* L. R., 3 Ex. 184, on *Ward and Henry's case*, viz., "The true

effect of the words used by the Lords Justices is that if the applicant shows a clear right to have his name put on or taken off the register, then, as the result of determining this question, the court will ministerially exercise the power of rectifying the register, but the right must first be established." That means, added the M. R., that it must be established to the satisfaction of the court to which the application is made. See also the observations of Giffard, L. J., in *Ex parte Kintrea* 5 Ch. 95; and *Askew's case*, 9 Ch. 664.

The provision empowering the court, if it rectifies the register, to order costs and damages to be paid by the company, but not by any other person (see *Ex parte Sargent*), is in favour of Lord Cairns' view; it is however submitted that, looking to the studiously general language of the rest of the section, the wider construction accords with the presumable intention of the legislature.

Semble, that in a complicated and difficult case the court may direct a bill to be filed. *Ex parte Parker*, 2 Ch. 685; and see *Simpson's case*, 9 Eq 91.

In deciding questions under this section the court will take into consideration every principle of equity applicable to the subject. *Ex parte Parker*, ubi supra, *Stranton Iron Co.*, 16 Eq. 559.

Where there is a fraud, the name is on the register "without sufficient cause," and the court can interfere. *Ex parte Kintrea*, 5 Ch 95; and see cases as to misrepresentation, p. 66.

Jurisdiction not exercised—To remove name of transferor, where transfer required to be, but not executed by transferee. *Musgrave and Hart's case*, 5 Eq. 194, decided on *Marino's case*, 2 Ch. 596. Nor on application of official liquidator representing a company in default, *Sichell's case*, 3 Ch. 119.

See p. 82 and cases there cited.

The superior courts have concurrent jurisdiction with the Stannaries court under this section. *Penhale, &c., Mining Co.*, 2 Ch. 398.

XXXVI. Whenever any order has been made rectifying the register, in the case of a company hereby required to send a list of its members to the registrar, the court shall, by its order, direct that due notice of such rectification be given to the registrar.

Notice to registrar of rectification of register.

XXXVII. The register of members shall be *primâ facie* evidence of any matters by this Act directed or authorised to be inserted therein.

Register to be evidence.

See *Waterford, &c., Rail. Co.* v. *Pidcock*, 8 Exch. 279, 17 Jur. 26.

Form of removing name, *Iron Ship Building Co.*, 34 Beav. 597.

Liability of Members.

XXXVIII. In the event of a company formed under this Act being wound up, every present and past member of such company shall be liable to contribute to the assets of the company to an amount sufficient for payment of the debts and liabilities of the company, and the costs charges and expenses of the winding up, and for the payment of such sums as may be required for the adjustment of the rights of the contributories amongst themselves, with the qualifications following: (that is to say),

Liability of present and past members of company

(1.) No past member shall be liable to contribute to the assets of the company, if he has ceased to be a member for a period of one year or upwards prior to the commencement of the winding up;

(2.) No past member shall be liable to contribute in respect of any debt or liability of the company contracted after the time at which he ceased to be a member.

(3.) No past member shall be liable to contribute to the assets of the company unless it appears to the court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Act:

(4.) In the case of a company limited by shares, no contribution shall be required from any member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as a present or past member:

(5.) In the case of a company limited by guarantee no contribution shall be required from any member exceeding the amount of the undertaking entered into on his behalf by the memorandum of association:

(6.) Nothing in this Act contained shall invalidate any provision contained in any policy of insurance or other contract whereby the liability of individual members upon any such policy or contract is restricted, or whereby the funds of the company are alone made liable in respect of such policy or contract:

(7.) No sum due to any member of a company, in his character of a member, by way of dividends, profits, or otherwise, shall be deemed

to be a debt of the company, payable to such member in a case of competition between himself and any other creditor not being a member of the company; but any such sum may be taken into account, for the purposes of the final adjustment of the rights of the contributories amongst themselves.

For general explanation of this section, so far as it relates to the liability of members, see p. 155.

The sub-sections relating to the liability of past members have been the subject of some discussion, and the following points have been decided:—

(1.) The liability of past members is a liability to contribute to the general assets of the company, against which assets creditors (at whatever time their debts may have been contracted) have equal rights; in other words, there is no division of creditors into classes with different rights against different funds, and, consequently, no marshalling between them; *Webb* v. *Whiffin*, L. R., 5 H. L. 711, affirming *Accidental Marine Insur. Corp.*, 5 Ch. 428; and overruling part of the decision in *Morris' case*, 7 Ch. 200.

(2.) In estimating the debts to which a past member is liable, all dividends paid on those debts under the winding up must be deducted, and he is thus liable only in respect of the amount of indebtedness of the company thereon existing after the exhaustion of the A contributories. *Brett's case, Morris's case*, 8 Ch. 800 (reported respectively, 6 Ch. 800, 7 Ch. 200, and re-heard in consequence of the decision in *Webb* v. *Whiffin*).

(3.) If a past member after the commencement of the winding up buys up and causes to be re-

leased to the company all the debts in respect of which he was liable, no call can be made on him in the winding up. *Brett's case*, ubi. supra; *Marsh's case*, 13 Eq 388.

Compare, however, the observations of Lord Chelmsford and Lord Cairns in *Webb* v. *Whiffin*, which show that this point cannot be considered as finally determined. It is indeed difficult to see why the date of the winding up which fixes the status of A contributories should not also fix the status of B contributories and render nugatory any private arrangement by them with B creditors.

A past member is, of course, in any event liable only to the extent of the debts and liabilities of the company existing at the time he left it, "with such costs and adjustment moneys (if any) as may be properly incident thereto or consequent thereon." See the judgment of Lord Selborne in *Brett's case*, *Morris's case*, ubi supra.

Before a past member can be placed on the list there must be evidence of a debt to which he is liable. *Weston's case*, 6 Eq. 17. Sub-section (3) leaves the time of settlement of the list of past members, or B list, in the discretion of the court; but it is not the practice to settle that list until it has been shown that the present members are unable to satisfy the debts of the company, per Selwyn L. J. in *Wright's case*, 12 Eq p. 345, n. *McEwen's case*, 6 Ch. 582. In *Andrew's case*, 3 Ch. 161, the company had not been registered a year, and it was admitted that the A contributories could not pay the calls made on them. When the B list is settled a past member may be placed on it without establishing that the A contributory in respect of the same shares will fail to satisfy his liability, for placing a man on the list does not of itself decide that he will necessarily have something to contribute. *Andrew's case*, ubi supra. See further (and particularly as to evidence of inability of present members), *Helbert* v. *Banner*, L. R., 5 H. L. 28. Two past members may be placed on the B list at the same time

in respect of the same shares, though of course the latest of such members cannot be called on until his transferor is exhausted. *Humby's case*, 20 W. R. 718.

There need not be existing shares to render a past member liable; thus a member whose shares have been extinguished by forfeiture may nevertheless be placed on the B list. *Bridger's case*, 4 Ch. 266; *Creyke's case*, 5 Ch. 63.

See as to costs of settling B list, *Marsh's case*, 13 Eq. 388.

Subsection (6) was introduced to prevent the inference, that in an unlimited insurance company, or other similar body, the members are liable to the insurers in an unlimited amount, although every policy or contract made by the company contains a clause restricting such liability to the amount of the assets of the company. See *Lethbridge* v. *Adams*, 13 Eq. 547.

As to equities of policy holders and general creditors, *State Insurance Co.*, 1 De G. J. & Sm. 634, 34 L. J. (Ch) 436.

Subsection (7) is explained in note to sect. 101.

Section 66 of the Act of 1856, regulating the rights of contributories amongst themselves, was omitted, in order that companies may be at liberty to arrange for themselves the mutual rights of their members.

For summary of persons liable as contributories, see note to section 74; and with respect to the contributions to be required from a director or manager whose liability is in pursuance of the Act of 1867 unlimited, see s. 5 of that Act.

PART III.

MANAGEMENT AND ADMINISTRATION OF COMPANIES AND ASSOCIATIONS UNDER THIS ACT.

For explanation of this part, see p. 158.

It may be convenient to give a summary of the duties imposed by this part on a company. They are as follows:—

1. To keep a registered office: s. 39.

2. To give notice of the situation of such office, and of any change therein, to the registrar : s. 40.
3. In the case of a limited company, to take care that its name, with the word "limited," is duly published : ss, 41, 42.
4. In the case of a limited company, to keep a correct register of mortgages : s. 43.
5. In the case of a limited banking company, or of an insurance deposit provident or benefit society, to publish a statement of assets and liabilities : s. 44.
6. In the case of a company not having a capital divided into shares, to keep at its office a list of its directors or managers, and send a copy of such list to the registrar : s. 45.
7. To hold a general meeting of its members once at least in every year : s. 49.

It may be added that section 41 of the Act of 1856, relating to "Legal instruments of company," (which was originally inserted here, but struck out during the progress of the bill in the House of Commons), is restored in the Act of 1867. See p. 123, and *Totterdell* v. *Fareham Blue Brick Co.*, L. R., 1 C. P. 674.

Provisions for Protection of Creditors.

Registered office of company.

XXXIX. Every company under this Act shall have a registered office, to which all communications and notices may be addressed. If any company under this Act carries on business without having such an office it shall incur a penalty not exceeding five pounds for every day during which business is so carried on.

Where a company had no registered office, service of creditor's demand, under s. 80, at unregistered place of business held sufficient. *Brit. Gas Co.*, 13 W. R. 649 ; 11 Jur. N. S. 559. See part II. of this Appendix, rule 3, and note there.

XL. Notice of the situation of such registered office, and of any change therein, shall be given to the registrar, and recorded by him: until such notice is given the company shall not be deemed to have complied with the provisions of this Act with respect to having a registered office.

Notice of situation of registered office

XLI. Every limited company under this Act, whether limited by shares or by guarantee, shall paint or affix, and shall keep painted or affixed, its name on the outside of every office or place in which the business of the company is carried on in a conspicuous position in letters easily legible, and shall have its name engraven in legible characters on its seal, and shall have its name mentioned in legible characters in all notices advertisements and other official publications of such company, and in all bills of exchange promissory notes endorsements cheques and orders for money or goods purporting to be signed by or on behalf of such company, and in all bills of parcels invoices receipts and letters of credit of the company.

Publication of name by a limited company.

XLII. If any limited company under this Act does not paint or affix, and keep painted or affixed, its name in manner directed by this Act, it shall be liable to a penalty not exceeding five pounds for not so painting or affixing its name, and for every day during which such name is not so kept painted or affixed. and every director and manager of the company who shall knowingly and wilfully authorise or permit such default shall be liable to the like penalty; and if any director, manager, or officer of such company, or any person on

Penalties on non-publication of name.

its behalf, uses or authorises the use of any seal purporting to be a seal of the company whereon its name is not so engraven as aforesaid, or issues or authorises the issue of any notice advertisement or other official publication of such company, or signs or authorises to be signed on behalf of such company any bill of exchange promissory note endorsement cheque order for money or goods, or issues or authorises to be issued any bill of parcels invoice receipt or letter of credit of the company, wherein its name is not mentioned in manner aforesaid, he shall be liable to a penalty of fifty pounds, and shall further be personally liable to the holder of any such bill of exchange promissory note cheque or order for money or goods for the amount thereof, unless the same is duly paid by the company.

Sections 41 and 42 are with but slight alteration copied from ss. 4 and 5 of the Limited Liability Act of 1855, (18 & 19 Vict. c. 133).

As to personal liability of directors, &c., on negotiable instruments signed by them, see p. 116. *Lindus* v. *Melrose*, 3 H. & N. 177, 4 Jur., N. S. 488; and *Penrose* v. *Martyr*, E. B. & E. 499, 5 Jur., N. S. 362.

As to the exemption from these sections of associations not for profit, see p. 220, 30 & 31 Vict. c. 131, s. 23.

Register of mortgages.

XLIII. Every limited company under this Act shall keep a register of all mortgages and charges specifically affecting the property of the company, and shall enter in such register in respect of each mortgage or charge a short description of the property mortgaged

or charged, the amount of charge created, and the names of the mortgagees or persons entitled to such charge: if any property of the company is mortgaged or charged without such entry as aforesaid being made, every director manager or other officer of the company who knowingly and wilfully authorises or permits the omission of such entry shall incur a penalty not exceeding fifty pounds: the register of mortgages required by this section shall be open to inspection by any creditor or member of the company at all reasonable times; and if such inspection is refused, any officer of the company refusing the same, and every director and manager of the company authorising or knowingly and wilfully permitting such refusal, shall incur a penalty not exceeding five pounds, and a further penalty not exceeding two pounds for every day during which such refusal continues; and in addition to the above penalty, as respects companies registered in England and Ireland, any judge sitting in chambers, or the Vice-Warden of the Stannaries in the case of companies subject to his jurisdiction, may by order compel an immediate inspection of the register.

See pp. 104 and 160.

Omission to register does not render a mortgage invalid, but directors and other officers of a company cannot avail themselves of an unregistered mortgage to themselves. *Wynn Hall Coal Co.*, 10 Eq. 515; *ex parte, Valpy and Chaplin* 7 Ch. 289. So too, where articles of association prescribe certain formalities on the execution of mortgages, and those formalities are not observed. *Gen. Prov. Assur. Company*, 17 W. R. 514, *ib. ex parte Nat. Bank*, 14 Eq. 507.

Certain companies to publish statement entered in schedule.

XLIV. Every limited banking company and every insurance company and deposit provident or benefit society under this Act shall, before it commences business, and also on the first Monday in February and the first Monday in August in every year during which it carries on business, make a statement in the form marked D. in the first schedule hereto, or as near thereto as circumstances will admit, and a copy of such statement shall be put up in a conspicuous place in the registered office of the company, and in every branch office or place where the business of the company is carried on, and if default is made in compliance with the provisions of this section, the company shall be liable to a penalty not exceeding five pounds for every day during which such default continues, and every director and manager of the company who shall knowingly and wilfully authorise or permit such default shall incur the like penalty.

Every member and every creditor of any company mentioned in this section shall be entitled to a copy of the above-mentioned statement on payment of a sum not exceeding sixpence.

See p. 161.

List of directors to be sent to registrar.

XLV. Every company under this Act, and not having a capital divided into shares, shall keep at its registered office a register containing the names and addresses and the occupations of its directors or managers, and shall send to the Registrar of Joint Stock Companies a copy of such register, and shall from time to time notify to

the registrar any change that takes place in such directors or managers.

See s. 25 and p. 153.

Penalty on company not keeping register of directors

XLVI. If any company under this Act, and not having a capital divided into shares, makes default in keeping a register of its directors or managers, or in sending a copy of such register to the registrar in compliance with the foregoing rules, or in notifying to the registrar any change that takes place in such directors or managers, such delinquent company shall incur a penalty not exceeding five pounds for every day during which such default continues, and every director and manager of the company who shall knowingly and wilfully authorise or permit such default shall incur the like penalty.

Promissory notes and bills of exchange.

XLVII. A promissory note or bill of exchange shall be deemed to have been made accepted or endorsed on behalf of any company under this Act, if made accepted or endorsed in the name of the company by any person acting under the authority of the company, or if made accepted or endorsed by of on behalf or on account of the company, by any person acting under the authority of the company.

See p. 162; and as to personal liability of maker of note, &c., purporting (without authority) to be in name of company, p. 116.

Prohibition against carrying on business with less than seven members

XLVIII. If any company under this Act carries on business when the number of its members is less than seven, for a period of six months after the number has

been so reduced, every person who is a member of such company during the time that it so carries on business after such period of six months, and is cognisant of the fact that it is so carrying on business with fewer than seven members, shall be severally liable for the payment of the whole debts of the company contracted during such time, and may be sued for the same, without the joinder in the action or suit of any other member.

See p. 163.

Provisions for Protection of Members.

General meeting of company.

XLIX. A general meeting of every company under this Act shall be held once at the least in every year.

By s. 39 of the Act of 1867 a general meeting must be held within four months after registration.

Power to alter regulations by special resolution.

L. Subject to the provisions of this Act, and to the conditions contained in the memorandum of association, any company formed under this Act may, in general meeting, from time to time, by passing a special resolution in manner hereinafter mentioned, alter all or any of the regulations of the company contained in the articles of association or in the Table marked A. in the first schedule, where such table is applicable to the company, or make new regulations to the exclusion of or in addition to all or any of the regulations of the company; and any regulations so made by special

resolution shall be deemed to be regulations of the company of the same validity as if they had been originally contained in the articles of association, and shall be subject in like manner to be altered or modified by any subsequent special resolution.

See p. 167.

Definition of special resolution.

LI. A resolution passed by a company under this Act shall be deemed to be special whenever a resolution has been passed by a majority of not less than three-fourths of such members of the company for the time being entitled, according to the regulations of the company to vote, as may be present in person or by proxy (in cases where by the regulations of the company proxies are allowed), at any general meeting of which notice specifying the intention to propose such resolution has been duly given, and such resolution has been confirmed by a majority of such members for the time being entitled according to the regulations of the company to vote, as may be present in person or by proxy at a subsequent general meeting, of which notice has been duly given, and held at an interval of not less than fourteen days, nor more than one month from the date of the meeting at which such resolution was first passed: at any meeting mentioned in this section, unless a poll is demanded by at least five members, a declaration of the chairman that the resolution has been carried shall be deemed conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against

the same: notice of any meeting shall, for the purposes of this section, be deemed to be duly given and the meeting to be duly held, whenever such notice is given and meeting held in manner prescribed by the regulations of the company: in computing the majority under this section, when a poll is demanded, reference shall be had to the number of votes to which each member is entitled by the regulations of the company.

See *Bryon* v. *Metrop. Saloon Omnibus Co.*, 4 Jur., N. S. 680, *ibid.* 1262, 3 De G. & J. 123. This power of altering all the regulations of the company has a most material bearing on the doctrine discussed above, at page 114. A company registered under this Act can by special resolution confirm any act of the directors that is not in contravention of the objects of the company as stated in the memorandum of association, or assume any powers consistent with the purposes for which it is formed A member therefore in such a company must, it would seem, appeal to the company for redress of a wrong, before he can make his complaint heard by a court of justice, except it be a case where the company is doing some act inconsistent with the objects of its incorporation.

As to notice of meeting, *Wright's case*, 12 Eq. 335, *n.*

Provision where no regulations as to meetings

LII. In default of any regulations as to voting every member shall have one vote, and in default of any regulations as to summoning general meetings a meeting shall be held to be duly summoned of which seven days' notice in writing has been served on every member in manner in which notices are required to be served by the Table marked A. in the first schedule

hereto, and in default of any regulations as to the persons to summon meetings five members shall be competent to summon the same, and in default of any regulations as to who is to be chairman of such meeting, it shall be competent for any person elected by the members present to preside.

See p. 168.

Registry of special resolutions.

LIII. A copy of any special resolution that is passed by any company under this Act, shall be printed and forwarded to the Registrar of Joint Stock Companies, and be recorded by him: if such copy is not so forwarded within fifteen days from the date of the confirmation of the resolution, the company shall incur a penalty not exceeding two pounds for every day after the expiration of such fifteen days during which such copy is omitted to be forwarded, and every director and manager of the company who shall knowingly and wilfully authorise or permit such default shall incur the like penalty.

See p. 169.

Copies of special resolutions.

LIV. Where articles of association have been registered, a copy of every special resolution for the time being in force shall be annexed to or embodied in every copy of the articles of association that may be issued after the passing of such resolution: where no articles of association have been registered, a copy of any special resolution shall be forwarded in print to any member requesting the same on payment of one shilling, or such less sum as the company may direct: and if

any company makes default in complying with the provisions of this section it shall incur a penalty not exceeding one pound for each copy in respect of which such default is made; and every director and manager of the company who shall knowingly and wilfully authorise or permit such default shall incur the like penalty.

Execution of deeds abroad

LV. Any company under this Act, may, by instrument in writing under its common seal, empower any person, either generally or in respect of any specified matter, as its attorney, to execute deeds on its behalf in any place not situate in the United Kingdom; and every deed signed by such attorney, on behalf of the company, and under his seal, shall be binding on the company, and have the same effect as if it were under the common seal of the company.

Section 55 is intended for the benefit of companies registered in the United Kingdom, but having land situate in the colonies; and provides that any company under the Act may, by instrument under its common seal, empower any person to execute deeds on its behalf in any place not situate in the United Kingdom.

For example, suppose a company in England to have contracted to sell its land in Australia. By the general law the transfer is required to be under the seal of the company. In the absence of this section, either the common seal must have been sent to the colony, or the instrument of transfer must have been sent to England for execution. Either of these courses would have been attended with risk, expense, and delay. This section altogether obviates the difficulty. All the company has to do is to execute an instrument under its common seal, appointing John Jones, its manager in Australia, as agent for the purpose of executing the transfer.

The deed will therefore be executed by John Jones on behalf of the company, and if sealed with his seal will be as effectual as if it were under the common seal of the company. The instrument appointing the attorney will require to be annexed to the conveyance as evidence of the authority of the agent: it will therefore be advisable in all cases where several conveyances are required, to send abroad several powers of attorney; and in each power reference should be made to the particular lands intended to be transferred by the attorney.

The above provisions seem amply sufficient for all practical purposes; but the power thereby given has been still further enlarged by the Companies Seals Act, 1864 (27 & 28 Vict. c. 19), intituled "An Act to enable joint-stock companies carrying on business in foreign countries to have official seals to be used in such countries." That Act is as follows:—

"Whereas there have been and may be established in the United Kingdom companies whose business is to be carried on in countries not situate in the United Kingdom, and it is convenient and desirable that investments may be made, and mortgages conveyances and leases taken, and contracts and engagements entered into, on behalf of the company, in such countries, in the name of the company: Be it therefore enacted, &c.

"I. This Act may be cited for all purposes as 'The Companies Seals Act, 1864.' Short title.

"II. Any company under 'The Companies Act, 1862, whose objects require or comprise the transaction of business as hereinbefore mentioned in foreign countries, may cause to be prepared an official seal for and to be used in any place district or territory situate out of the United Kingdom, in which the business of the company shall be carried on, and every such official seal may and shall be a fac simile of or as nearly as practicable a fac-simile of the common seal of the company, with the exception that on Power to companies to have official seal.

the face thereof shall be inscribed the name of each and every place district or territory in and for which it is to be used: Provided that it shall be lawful for any such company as aforesaid from time to time to break up and renew any official seal or seals, and to vary the limits within which it is intended to be used.

Power to companies to appoint agents abroad to affix seals.

"III. Every company having or using any such official seal as is authorised by this Act may from time to time, by any instrument or instruments in writing under the common seal of the company, empower any agent or agents specially appointed for the purpose, or any local agent board committee manager or commissioner appointed under the provisions of the articles of association of such company, in any place district or territory situate out of the United Kingdom where the business of the company shall for the time being be carried on, to affix such official seal to any deed contract or other instrument to which the company is or shall be made a party in such place district or territory, and no other order of the company or the board of directors thereof shall be necessary to authorise any such seal to be affixed to any deed contract or other instrument.

Duration of powers granted under sect. 3 of Act.

"IV. Every power granted under the last preceding section shall, as between the company their successors and assigns on the one hand, and the person or persons dealing with the agent or agents board committee manager or commissioner named in the instrument conferring the power and all parties claiming through or under such person or persons on the other hand, continue in force during the period, if any, mentioned in the instrument conferring the power, or if no power be there mentioned then until notice of the revocation or determination of the power shall have been given to such person or persons as aforesaid.

"V. Whenever any such official seal as aforesaid shall be affixed to any document, the person affixing the same shall, by writing under his hand, and written on the document to which the seal may have been affixed, certify the date when and the place where the same was affixed; and any docu-

ment to which any such seal shall have been duly affixed within the district or territory or place the name whereof is inscribed on such seal shall bind the company in the same way and to the same extent and have the same force and effect as if it had been duly sealed with the common seal of the company

"VI. The powers given by this Act shall be exercised by such companies only as are or shall be expressly authorized to exercise the same by their articles of association, or a special resolution passed according to the provisions of 'The Companies Act, 1862,' and shall be exercised by such companies subject to any directions or restrictions in their articles of association or the special resolutions contained.

Companies not to exercise powers unless authorised.

"VII. Nothing in this Act contained shall operate to repeal the provisions of the 55th section of 'The Companies Act, 1862,' but such section shall continue in force, and all acts done or to be done thereunder shall be as valid and effectual as if this Act had not been passed."

Section 55 of 25 & 26 Vict c 89 not repealed

It has been justly observed (10 Jurist, (N. S.) p. 391), that the 4th section is likely to give rise to great dispute, as it compels any person dealing with the company to see whether the power of the agent to affix the seal has not expired probably it will in practice be convenient to continue in use the provisions of section 55, which are unaffected by the last-mentioned Act.

LVI. The Board of Trade may appoint one or more competent inspectors to examine into the affairs of any company under this Act, and to report thereon, in such manner as the Board may direct, upon the applications following, (that is to say,)

Examination of affairs of company by inspectors

(1.) In the case of a banking Company that has a capital divided into shares, upon the applica-

tion of members holding not less than one-third part of the whole shares of the company for the time being issued:

(2.) In the case of any other company that has a capital divided into shares, upon the application of members holding not less than one-fifth part of the whole shares of the company for the time being issued:

(3.) In the case of any company not having a capital divided into shares upon the application of members being in number not less than one-fifth of the whole number of persons for the time being entered on the register of the company as members.

Application for inspection to be supported by evidence

LVII. The application shall be supported by such evidence as the Board of Trade may require for the purpose of showing that the applicants have good reason for requiring such investigation to be made, and that they are not actuated by malicious motives in instituting the same; the Board of Trade may also require the applicants to give security for payment of the costs of the inquiry before appointing any inspector or inspectors.

See pp. 164-5.

Inspection of books.

LVIII. It shall be the duty of all officers and agents of the company to produce for the examination of the inspectors of all books and documents in their custody or power: any inspector may examine upon oath the officers and agents of the company in relation to its

business, and may administer such oath accordingly if any officer or agent refuses to produce any book or document hereby directed to be produced, or to answer any question relating to the affairs of the company, he shall incur a penalty not exceeding five pounds in respect of each offence.

Result of examination, how dealt with.

LIX. Upon the conclusion of the examination the inspectors shall report their opinion to the Board of Trade: such report shall be written or printed, as the Board of Trade directs: a copy shall be forwarded by the Board of Trade to the registered office of the company, and a further copy shall, at the request of the members upon whose application the inspection was made, be delivered to them or to any one or more of them: all expenses of and incidental to any such examination as aforesaid shall be defrayed by the members upon whose application the inspectors were appointed, unless the Board of Trade shall direct the same to be paid out of the assets of the company, which it is hereby authorized to do.

Power of company to appoint inspectors.

LX. Any company under this Act may by special resolution appoint inspectors for the purpose of examining into the affairs of the company: the inspectors so appointed shall have the same powers and perform the same duties as inspectors appointed by the Board of Trade, with this exception, that, instead of making their report to the Board of Trade, they shall make the same in such manner and to such persons as the company in general meeting directs; and the officers and agents of the company shall incur the same penalties, in case of any refusal to produce any book or

document hereby required to be produced to such inspectors, or to answer any question, as they would have incurred if such inspector had been appointed by the Board of Trade.

Report of inspectors to be evidence.

LXI. A copy of the report of any inspectors appointed under this Act, authenticated by the seal of the company into whose affairs they have made inspection, shall be admissible in any legal proceeding, as evidence of the opinion of the inspectors in relation to any matter contained in such report.

Notices.

Service of notices on company

LXII. Any summons notice order or other document required to be served upon the company may be served by leaving the same, or sending it through the post in a pre-paid letter addressed to the company, at their registered office.

See Part II. of this App., rule 3, as to service of winding up petition.

Rules as to notices by letter.

LXIII. Any document to be served by post on the company shall be posted in such time as to admit of its being delivered in the due course of delivery within the period (if any) prescribed for the service thereof; and in proving service of such document it shall be sufficient to prove that such document was properly directed, and that it was put as a prepaid letter into the Post-office.

LXIV. Any summons, notice, order, or proceeding requiring authentication by the company, may be signed by any director, secretary, or other authorized officer of the company, and need not be under the common seal of the company, and the same may be in writing or in print, or partly in writing and partly in print. Authentication of notices of company.

As to these sections see p. 169.

Legal Proceedings.

LXV. All offences under this Act made punishable by any penalty may be prosecuted summarily before two or more justices, as to England, in manner directed by an Act passed in the session holden in the eleventh and twelfth years of the reign of Her Majesty Queen Victoria, chapter forty-three, intituled "An Act to Facilitate the Performance of the Duties of Justices of the Peace out of Sessions within England and Wales with respect to Summary Convictions and Orders," or any Act amending the same; and as to Scotland, before two or more justices or the sheriff of the county in manner directed by the Act passed in the session of Parliament holden in the seventeenth and eighteenth years of the reign of Her Majesty Queen Victoria, chapter one hundred and four, intituled "An Act to Amend and Consolidate the Acts relating to Merchant Shipping," or any Act amending the same, as regards offences in Scotland against that Act, not being offences by that Act described as felonies or misdemeanors; and Recovery of penalties.

as to Ireland, in manner directed by the Act passed in the session holden in the fourteenth and fifteenth years of the reign of Her Majesty Queen Victoria, chapter ninety-three, intituled "An Act to Consolidate and Amend the Acts regulating the Proceedings of Petty Sessions and the Duties of Justices of the Peace out of Quarter Sessions in Ireland," or any Act amending the same.

Application of penalties.

LXVI. The justices or sheriff imposing any penalty under this Act may direct the whole or any part thereof to be applied in or towards payment of the costs of the proceedings, or in or towards the rewarding the person upon whose information or at whose suit such penalty has been recovered; and, subject to such direction, all penalties shall be paid into the receipt of Her Majesty's Exchequer, in such manner as the Treasury may direct, and shall be carried to and form part of the consolidated fund of the United Kingdom.

See p. 170.

Evidence of proceedings at meetings

LXVII. Every company under this Act shall cause minutes of all resolutions and proceedings of general meetings of the company, and of the directors or managers of the company in cases where there are directors or managers, to be duly entered in books to be from time to time provided for the purpose; and any such minute as aforesaid, if purporting to be signed by the chairman of the meeting at which such resolutions were passed or proceedings had, or by the chairman of the next succeeding meeting shall be received as evidence in all legal proceedings; and until the con-

trary is proved, every general meeting of the company or meeting of directors or managers in respect of the proceedings of which minutes have been so made shall be deemed to have been duly held and convened, and all resolutions passed thereat or proceedings had, to have been duly passed and had, and all appointments of directors managers or liquidators shall be deemed to be valid, and all acts done by such directors, managers or liquidators shall be valid notwithstanding any defect that may afterwards be discovered in their appointments or qualifications.

The words "or by the chairman of the next succeeding meeting," were introduced to meet a difficulty which would otherwise frequently arise in practice. See *Cornwall Great Mining Co.* v. *Bennet*, 5 H. & N. 423; 6 Jur. N. S. 539.

Minute signed after proceedings taken to wind up company held *primâ facie* evidence. *Roney's case*, 10 Jur. N. S. 790, 812, 33 L. J., Ch. 731. See also *Lane's case*, 1 De G. J. & S. 504; 10 Jur. N. S. 25; 33 L. J., Ch. 84.

But the section is not intended to give validity to the proceedings of a liquidator after his appointment has been shown to be invalid. *Bridport Old Brewery Co.* 2 Ch. 191.

For proceedings at general meetings see Table A, articles 35–43.

Jurisdiction of Vice-Warden of Stannaries.

LXVIII. In the case of companies under this Act, and engaged in working mines within and subject to the jurisdiction of the Stannaries, the Court of the Vice-Warden of the Stannaries shall have and exercise the like jurisdiction and powers, as well on the common law as on the equity side thereof, which it now possesses by custom usage or statute in the case of unincorporated companies, but only so far as such jurisdic-

tion or powers are consistent with the provisions of this Act and with the constitution of companies as prescribed or required by this Act; and for the purpose of giving fuller effect to such jurisdiction in all actions suits or legal proceedings instituted in the said court, in causes or matters whereof the court has cognizance, all process issuing out of the same and all orders rules demands notices warrants and summonses required or authorized by the practice of the court to be served on any company whether registered or not registered, or any member or contributory thereof, on any officer agent director manager or servant thereof, may be served in any part of England, without any special order of the Vice-Warden for that purpose, or by such special order may be served in any part of the United Kingdom of Great Britain and Ireland or in the adjacent islands parcel of the dominions of the Crown, on such terms and conditions as the Court shall think fit; and all decrees orders and judgments of the said Court made or pronounced in such causes or matters may be enforced in the same manner in which decrees orders and judgments of the Court may now by law be enforced, whether within or beyond the local limits of the Stannaries; and the seal of the said Court and the signature of the registrar thereof shall be judicially noticed by all other Courts and judges in England, and shall require no other proof than the production thereof: the registrar of the said Court or the assistant registrar in making sales under any decree or order of the Court, shall be entitled to the same privilege of selling by auction or competition

without a licence, and without being liable to duty as a judge of the Court of Chancery is entitled to in pursuance of the Acts in that behalf.

Provision as to costs in actions brought by certain limited companies.

LXIX. Where a limited company is plaintiff or pursuer in any action suit or other legal proceeding, any judge having jurisdiction in the matter may, if it appears by any credible testimony that there is reason to believe that if the defendant be successful in his defence the assets of the company will be insufficient to pay his costs, require sufficient security to be given for such costs, and may stay all proceedings until such security is given.

See p. 170.

The words "if it appears by any credible testimony" were introduced to meet the objection raised in *Caillaud's Patent Tanning Co.* v. *Caillaud*, 26 Beav. 427. See *Southampton Steam Boat Co.* v. *Rawlings*, 9 Jur. N. S. 887.

The security given under this statute must be sufficient, and the usual rule of the court, as to giving security for 100*l.* only, does not apply. *Imperial Bank of China* v. *Bank of Hindostan*, 1 Ch. 437.

Right to require security not waived under the circumstances by defendant putting in answer. *Washoe Mining Co.* v. *Ferguson*, 2 Eq. 371. *Semble* that security must be given whenever a bill is filed in the name of a limited company which is being wound up whether it be a purely cross-bill or not. *City of Moscow Gas Co.* v. *International Financial Society*, 7 Ch. 225, though see *Accidental &c. Insurance Co.* v. *Mercati*, 3 Eq. 200.

An unlimited company, though insolvent, cannot be ordered to give security. *United Ports Co.* v. *Hill*, L. R., 5 Q. B. 395.

Declaration in action against members.

LXX. In any action or suit brought by the company against any member to recover any call or other moneys

due from such member in his character of member, it shall not be necessary to set forth the special matter, but it shall be sufficient to allege that the defendant is a member of the company, and is indebted to the company in respect of a call made or other moneys due, whereby an action or suit hath accrued to the company.

This section was inserted to prevent the difficulties that might arise in pleading from the doctrines propounded in *Welland Ry. Co.* v. *Blake*, 6 H. & N. 410, 7 Jur. N. S. 373. It will be recollected that the production of the register is sufficient evidence of membership (s. 37), and a minute of the resolution making the call, signed as required by section 67, is sufficient proof of the call having been made.

Alteration of Forms.

Board of Trade may alter forms in schedule.

LXXI. The forms set forth in the second schedule hereto, or forms as near thereto as circumstances admit, shall be used in all matters to which such forms refer; the Board of Trade may from time to time make such alterations in the tables and forms contained in the first schedule hereto, so that it does not increase the amount of fees payable to the registrar in the said schedule mentioned, and in the forms in the second schedule, or make such additions to the last-mentioned forms, as it deems requisite: any such table or form, when altered, shall be published in the *London Gazette*, and upon such publication being made, such table or form shall have the same force as if it were included in

the schedule to this Act, but no alteration made by the Board of Trade in the Table marked A. contained in the first schedule shall affect any company registered prior to the date of such alteration, or repeal as respects such company, any portion of such table.

Arbitration.

LXXII. Any company under this Act may from time to time, by writing under its common seal, agree to refer and may refer to arbitration, in accordance with "The Railway Companies Arbitration Act, 1859," any existing or future difference question or other matter whatsoever in dispute between itself and any other company or person, and the companies parties to the arbitration may delegate to the person or persons to whom the reference is made power to settle any terms or to determine any matter capable of being lawfully settled or determined by the companies themselves, or by the directors or other managing body of such companies.

Power for companies to refer matters to arbitration

LXXIII. All the provisions of "The Railway Companies Arbitration Act, 1859," shall be deemed to apply to arbitrations between companies and persons in pursuance of this Act; and in the construction of such provisions "the companies" shall be deemed to include companies authorized by this Act to refer disputes to arbitration.

Provisions of 22 & 23 Vict c. 59, to apply

See p. 171.

PART IV.

WINDING UP OF COMPANIES AND ASSOCIATIONS UNDER THIS ACT.

For explanation of this part of the Act, see chapter IV., p. 172. The general object is to provide machinery for the collection of the assets of the company, their distribution among the creditors, and the adjustment of the rights of the contributories among themselves.

For digest of law relating to this part, see Index, titles "Court in Winding up," "Liquidators," "Winding up;" and for practice, see Part II. of this App.

Preliminary.

Meaning of contributory.

LXXIV. The term "contributory" shall mean every person liable to contribute to the assets of a company under this Act, in the event of the same being wound up; it shall also, in all proceedings for determining the persons who are to be deemed contributories, and in all proceedings prior to the final determination of such persons, include any person alleged to be a contributory.

Contributories in companies formed under Acts of 1856-7, 1862

Contributories to the assets of a company, *for payment of its debts and liabilities, and the costs charges and expenses of the winding up* (ss. 38, 102) are, in the case of companies formed under the Acts of 1856–7, or this Act, as follows:—

As against creditors.

1. Present registered members, s. 38.
2. Persons who have agreed to become members, but have not been registered, s. 23.

3. Past members, s. 38.

4. Representative contributories, *i.e.* (*a.*) Personal representatives, heirs, and devisees of deceased contributories, s. 76. (*b.*) Assignees of bankrupt contributories, s. 77. (*c.*) Husbands of female contributories, s. 78.

Class 1 may repudiate their liability by showing either that they never agreed to become members, and therefore were wrongfully registered, or that they have *bonâ fide* transferred their shares, although the transfers have not been registered.

They may show that they never agreed, *in fact*, to be members, by proving that no binding agreement was entered into by them (see p. 70).

They may show that they never agreed, *in law*, to be members, by proving a personal incapacity, such as infancy or coverture, to enter into an agreement at all. (See p. 71.)

That misrepresentations by the company or its agents cannot be pleaded in bar of being made a contributory as against creditors, see p. 72.

Under class 2 will arrange themselves—(1) Allottees and scripholders; (2) Persons who have agreed to take transfers of shares, but have not been registered.

The subject of allottees and scripholders is discussed p. 37.

As to unregistered transfers see p. 82.

Class 3 includes only members who have ceased to be such within one year before the commencement of the winding up (s. 38). Moreover, the liability of members of this class is subject to two most important limitations, that is to say—

1. No past member is liable to contribute in respect of any debt or liability of the company contracted after the time at which he ceased to be a member, s. 38. (2.)

2. No past member is liable to contribute to the assets of the company, unless it appears to the court that the existing members are unable to satisfy the

contributions required to be made by them, s. 38. (3.) (See note to s. 38).

As to class 4, see sections 76, 77, 78, 99, 105, 106, and p. 85.

Possibly one other class may be added to the above list of contributories, namely, persons who have bound themselves by express contract to contribute to the assets for payment of its debts (see *Reaveley's case*, 1 De G. & Sm. 550; *Reid's case*, 24 Beav. 318; *Maxwell's case*, 24 Beav. 321).

For adjustment of rights of contributories amongst themselves.

In considering who are to be contributories *to the assets of a company for the adjustment of the rights of contributories amongst themselves*, (ss. 38, 109) cases of misrepresentation and of agreements between the members themselves will, of course be allowed their full weight. See ss. 109, 133 (9) and (10), and notes.

Contributories in companies registered but not formed under Companies Acts, 1856, 1857, 1862

When a company registered but not formed under the Acts of 1856-7, or this Act, is wound up, the contributories in respect of debts and liabilities contracted prior to registration, are defined by s. 196, (5), and are in effect every person who if the company had not been registered would have been liable at law or in equity to pay or contribute to the payment of any debt or liability of the company contracted prior to registration, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members amongst themselves in respect of any such debt or liability; or to pay or contribute to the payment of the costs charges and expenses of winding up the company, so far as relates to such debts or liabilities as aforesaid. The contributories in respect of debts and liabilities contracted subsequent to registration, are the same persons as would have been contributories if the company had been formed as well as registered under the above-mentioned Acts.

Contributories in an unregistered company.

In the case of an unregistered company being wound up section 200 provides that every person shall be deemed to be a contributory who is liable at law or in equity to pay or contribute to the payment of any debt or liability of the company, or to pay or contribute to the pay-

ment of any sum for the adjustment of the rights of the members amongst themselves, or to pay or contribute to the payment of the costs charges and expenses of winding up the company, and that every such contributory shall be liable to contribute to the assets of the company in the course of the winding up of all sums due from him in respect of any such liability as aforesaid.

It is needless to observe that the individuals comprising the class of contributories in the cases last referred to, must be ascertained by reference to the nature of the particular company, and the general principles laid down above in Part I., cc. II., III., as the statute gives no rule for ascertaining them.

Comparison between this section and corresponding section of Act of 1856.

Comparing this section with section 65 of the Act of 1856, it will be remarked that there the word "contributory" is defined to mean "any existing or former shareholder upon whom calls are authorized to be made by the third part of the Act."

Here it neither creates nor describes any liability, but is merely a short expression for one "who is liable to contribute to the assets of the company in the event of its being wound up." The extension in part 8 of the winding-up system to companies in general necessitated the change; for from what has been said above, it is obvious that *possibly* in winding up corporate companies, and *probably* in winding up unincorporate companies, some persons may be bound to contribute to the assets of the company, or in other words, will be contributories, who do not fall within the description of either existing or former members.

Nature of liability of contributory.

LXXV. The liability of any person to contribute to the assets of a company under this Act, in the event of the same being wound up, shall be deemed to create a debt (in England and Ireland of the nature of a specialty) accruing due from such person at the time when his liability commenced, but payable at the time

or respective times when calls are made as hereinafter mentioned for enforcing such liability; and it shall be lawful in the case of the bankruptcy of any contributory to prove against his estate the estimated value of his liability to future calls, as well as calls already made.

A call under the Winding-up Acts of 1848–9, was decided not to be a specialty debt, on the ground "that it was the enforcement of the obligation which the partner had contracted by entering into the partnership business, and not the enforcement of the specific covenants contained in the deed." *Robinson's Executors* v. *Royal Australian Bank*, 3 Sm. & Giff. 272, 6 D. G. M. & G. 572, as explained by Lord Kingsdown in *Williams* v. *Harding*, L. R. 1, H. L. 9. It was also decided in the last-named case, that a call did not constitute a new debt, but amounted merely to an enforcement of the antecedent liability of a shareholder. There seems some difficulty in reconciling the two decisions. This section, however, puts an end to all question, by enacting that the liability to pay calls creates a specialty debt, and that the call is merely a mode of declaring when the debt so created becomes payable. In other words the section affirms the doctrine of *Williams* v. *Harding*, and carries it to its logical consequence by making the liability a specialty debt:—binding the heirs. *Buck* v. *Robson*, 10 Eq. 629. See also *Wryghte* v. *Lindsay*, 6 Jur. (N. S.) 435, *ex parte Harding*, 33 L. J. (Bankruptcy), 26.

In the case of a bankruptcy or its equivalent, there can only be a proof under this section if the winding up has preceded the bankruptcy, since until the winding up the liability is incapable of estimation. *Financial Corpor.* v. *Lawrence*, L. R., 4 C. P. 731. And see *ex parte King*, 3 Ch. 10. *Mitchell's case*, 5 Ch. 400.

A contributory executing a deed of arrangement must enter the company as a creditor for the estimated amount

of future calls. *Ex parte Pickering*, 4 Ch. 58, and see further *M'Ewen's case*, 6 Ch. 582. *Ex parte Marshall*, 7 Ch. 324.

This section applies in the case of an unregistered company wound up under the Act. *In re Muggeridge, Ex parte Bank of London &c. Insur. Association*, 10 Eq. 443.

Contributories in case of death

LXXVI. If any contributory dies either before or after he has been placed on the list of contributories hereinafter mentioned, his personal representatives heirs and devisees shall be liable in a due course of administration to contribute to the assets of the company in discharge of the liability of such deceased contributory, and such personal representatives heirs and devisees shall be deemed to be contributories accordingly.

See pp. 85, 173.

Contributories in case of bankruptcy

LXXVII. If any contributory becomes bankrupt, either before or after he has been placed on the list of contributories, his assignees shall be deemed to represent such bankrupt for all the purposes of the winding up, and shall be deemed to be contributories accordingly, and may be called upon to admit to proof against the estate of such bankrupt, or otherwise to allow to be paid out of his assets in due course of law, any moneys due from such bankrupt in respect of his liability to contribute to the assets of the company being wound up; and for the purposes of this section any person who may have taken the benefit of any Act for the relief of insolvent debtors before the eleventh day of October, one thousand eight hundred

and sixty-one, shall be deemed to have become bankrupt.

Where the bankruptcy of a shareholder and his discharge precede the winding up and the bankrupt retains his shares, he remains liable to subsequent calls. *Martin's Anchor Co.* v. *Morton*, L. R. 3 Q. B. 306. *Hastie's case*, 4 Ch. 274; nor does the absence of an order of discharge make any difference. *Financial Corporation* v. *Lawrence*, L. R., 4 C. P. 731. See *Parbury's case*, 3 De G. F. & J. 80, and the remarks thereon of Giffard, L. J., in *Hastie's case*.

As to disclaimer of shares by trustee in bankruptcy under the Bankruptcy Act, 1869; 32 & 33 Vict. c. 71, s. 23. *Ex parte Llynvi Coal Co.* 7 Ch. 28.

As to effect of certificate in Indian bankruptcy, see *Parbury's case*, ubi supra.

As to the power of the official liquidator, in case of the bankruptcy of a contributory, see s. 95.

As to set off, note to s. 101.

The right given by this section does not extend to a proof against the estate of a transferee who has allowed the liability of shares to fall on the transferor. *Holmes* v. *Symons*, 13 Eq. 66.

Contributories in case of marriage.

LXXVIII. If any female contributory marries, either before or after she has been placed on the list of contributories, her husband shall during the continuance of the marriage be liable to contribute to the assets of the company the same sum as she would have been liable to contribute if she had not married, and he shall be deemed to be a contributory accordingly.

See p. 86.

Winding up by Court.

LXXIX. A company under this Act may be wound up by the Court as hereinafter defined, under the following circumstances; (that is to say),

Circumstances under which company may be wound up by court.

(1.) Whenever the company has passed a special resolution requiring the company to be wound up by the court:

(2.) Whenever the company does not commence its business within a year from its incorporation, or suspends its business for the space of a whole year:

Metropolitan Warehousing Co., 15 W. R., 1121. Order made though there were no debts and no money paid up, and the petition was opposed by a majority of shareholders, *Tumacacori Mining Co.*, 17 Eq. 534.

(3.) Whenever the members are reduced in number to less than seven:

Sanderson's Patents Association, 12 Eq. 188.

(4.) Whenever the company is unable to pay its debts:

(5.) Whenever the court is of opinion that it is just and equitable that the company should be wound up.

See s. 91 and note.

The fifth sub-section of the Act of 1856, s. 67, "whenever three-fourths of the capital of the company have been lost or become unavailable," was omitted as unnecessary, and

giving rise to improper applications on behalf of dissatisfied shareholders.

A company formed and registered under the Act may be wound up under it, though all its shareholders are foreigners, and it has never carried on business in England. *General Land Credit Co.*, 5 Ch. 363, affirmed nom. *Princess of Reuss* v. *Bos*, L. R., 5 H. L. 176.

In sub.-sec. (4) inability to pay debts refers to debts actually due, of which a creditor could claim immediate payment. *European Life Assurance Society*, 9 Eq. 122.

Sub.-sec. (5) is restricted to matters *ejusdem generis* with the four previous sub-sections, and the court will not under it, on the petition of a shareholder, order a limited company solvent though not prospering, to be wound up against the wish of a majority of shareholders. *Factage Parisien Co.* 11 Jur. (N. S.) 121. *Hop and Malt Exch. Co.* W. N. 1866, 222; *Suburban Hotel Co.* 2 Ch. 737. *Joint Stock Coal Co.*, 8 Eq. 146. *London Suburban Bank*, 6 Ch. 641. See also *Anglo-Greek Steam Co.*, 2 Eq. 1. *ex parte Fox*, 6 Ch. 176. *Professional &c. Building Society*, 8 Ch. 856; and the judgment in *European Life Assur. Co.*, 9 Eq. 122; also *Princess of Reuss* v. *Bos*, L. R., 5 H. L. 176. Order made in the case of a bubble company not shown to be insolvent, *London & County Coal Co.*, 3 Eq. 355; where the substratum of the company was considered to be gone, *Gt. N. Copper Mining Co.*, 17 W. R. 462; and where there was matter for investigation and preponderating influence of a single shareholder, *W. Surrey Tanning Co.*, 2 Eq. 737 Order refused in the case of a very small company where there was no difficulty in the way of a voluntary winding up, *Natal &c. Co.*, 1 H. & M. 639. *Sea and River Marine Insur. Co.*, 2 Eq. 545, but made in a similar case by V.-C. Mulins, *Sanderson's Patents Association*, 12 Eq. 188.

Where a petitioner for a compulsory order asked at the hearing that the petition might stand over in order to enable resolutions for a voluntary winding up to be passed, Lord Romilly being of opinion that the case required investiga-

tion, made a compulsory order, and gave the carriage of it to another shareholder who appeared in support of the petition. *Berlin Great Market &c. Co.*, 19 W. R. 793.

A fully paid up shareholder may be a petitioner; see note to s. 82.

As to creditor's petitions see note to next section.

As to unlimited company, *Norwich Yarn Co.*, 12 Beav. 366. *Electric Telegraph Co. of Ireland*, 22 Beav. 471.

As to winding up under supervision of the court, see note to s. 147.

As to unregistered company, see note to s. 199.

As to winding up of Life Assurance Company which has transferred its business to another company, see s. 4 of Life Assurance Companies Act, 1872 (35 & 36 Vict. c. 41), in App. III.

Company when deemed unable to pay its debts.

LXXX. A company under this Act shall be deemed to be unable to pay its debts;

(1.) Whenever a creditor by assignment or otherwise to whom the company is indebted at law or in equity in a sum exceeding fifty pounds then due, has served on the company, by leaving the same at their registered office, a demand under his hand requiring the company to pay the sum so due, and the company has for the space of three weeks succeeding the service of such demand neglected to pay such sum, or to secure or compound for the same to the reasonable satisfaction of the creditor.

As to service of demand, see note to s. 39.

As soon as the debt is proved, the winding-up order is almost a matter of course; *Gen. Rolling Stock Co.*, 34 Beav. 314. *Consolidated Bank*, W. N. 1866, 232; but the wishes of the majority of creditors will be regarded. See s. 91 and

note. A creditor who cannot get paid without a winding up is entitled *ex debito justitiæ* to an order, *Western of Canada Oil &c. Co.* 17 Eq. 1.

A creditor has, however, been restrained from presenting a petition, the V.-C. (Malins) being of opinion that the company was solvent and the petition not *bonâ fide*. *Cadiz Waterworks Co.* v. *Barnett*, 19 Eq. 182.

Where there is a *bonâ fide* dispute as to the existence of the debt on which a petition is founded, the convenient and proper course is, not to try the question of debt upon the petition, but to adjourn the hearing of the petition, under s. 86, until the debt has been established at law, *Catholic Publishing Co.*, 2 De G. J. & Sm. 116. But the court will see that the question is a substantial one before directing an action, *King's Cross Industrial Dwellings Co.*, 11 Eq. 149. Where an action was pending in respect of the claim and the company had gone into voluntary liquidation, and the liquidators offered a personal undertaking to satisfy the claim if established, and also offered to set aside a sufficient sum to satisfy the claim with interest and costs, the creditor's petition was ordered to stand over till after trial of the action, *Imp. Guardian Assur. Soc.*, 9 Eq. 447.

In *Bowes* v. *Hope Insur. Society*, 11 H. L. C. 389, 11 Jur. (N. S.) 643, the company denied the validity of the judgment creditor's debt, and the Lords Justices gave him time to establish it. The House of Lords, on appeal, altered the order, and directed the winding up to be good, unless within a limited time the company filed a bill, and impeached the debt, per L. C., *London India Rubber Co.*, 1 Ch. 331.

Where it was asked that the drawing up of the order might be postponed for a fortnight in order that the company might satisfy its creditors with the proceeds of a call, V.-C. Wickens refused the application. *Home Assurance Assocn.* (No. 2), 12 Eq. 112.

(2.) Whenever, in England and Ireland, execution or other process issued on a judgment decree

or order obtained in any court in favour of any creditor, at law or in equity, at any proceeding instituted by such creditor against the company, is returned unsatisfied in whole or in part:

(3.) Whenever, in Scotland, the induciæ of a charge for payment on an extract decree, or an extract registered bond, or an extract registered protest have expired without payment being made:

(4.) Whenever it is proved to the satisfaction of the court that the company is unable to pay its debts.

See *European Life Assur. Soc.*, 9 Eq. 122. This subsec. is now expanded in the case of life assurance companies by s. 21 of the Life Assurance Companies Act, 1870 (33 & 34 Vict. c. 41). Infra, App. III.

Definition of "the court."

LXXXI. The expression "the court," as used in this part of this Act, shall mean the following authorities; (that is to say,)

In the case of a company engaged in working any mine within and subject to the jurisdiction of the Stannaries—the Court of the Vice-Warden of the Stannaries, unless the Vice-Warden certifies that in his opinion the company would be more advantageously wound up in the High Court of Chancery, in which case "the court" shall mean the High Court of Chancery:

The test of stannary jurisdiction, under this section, is not actual working, but the object for which the company was formed, *in re E. Botallack Mining Co.*, 34 Beav. 82; 34 L. J., Ch. 81.

In the case of a company registered in England that is not engaged in working any such mine as aforesaid—the High Court of Chancery:

In the case of a company registered in Ireland, the Court of Chancery in Ireland:

In all cases of companies registered in Scotland, the Court of Session in either division thereof:

Provided that where the Court of Chancery in England or Ireland makes an order for winding up a company under this Act, it may, if it thinks fit, direct all subsequent proceedings for winding up the same to be had in the court of bankruptcy having jurisdiction in the place in which the registered office of the company is situate; and thereupon such last-mentioned court of bankruptcy shall, for the purposes of winding up the company, be deemed to be "the court" within the meaning of the Act, and shall have for the purposes of such winding up all the powers of the High Court of Chancery, or of the Court of Chancery in Ireland as the case may require.

Companies under the Industrial and Provident Societies Acts (see Acts in App. III.), may be wound up under this Act; but in that case "the court" will be the county court.

By s. 41 of the Companies Act, 1867, the Court of Chancery in England may, after making an order for winding up a company under this Act direct all subsequent proceedings to be had in a county court; and by s. 42 may transfer the winding up from one county court to another.

Application for winding up to be made by petition.

LXXXII. Any application to the court for the winding up of a company under this Act shall be by petition; it may be presented by the company, or by

any one or more creditor or creditors, contributory or contributories of the company, or by all or any of the above parties, together or separately; and every order which may be made on any such petition shall operate in favour of all the creditors and all the contributories of the company in the same manner as if it had been made upon the joint petition of a creditor and contributory.

Section 40 of the Act of 1867 disqualifies a contributory —not being an original allottee or entitled to his shares by devolution on the death of a former holder—from becoming a petitioner (except in the case of reduction of the members below seven), unless he has held his shares for at least six months during the eighteen months preceding the commencement of the winding up.

Semble that the assignee of a judgment debt may petition. *Lond. & Birm. Alkali Co.*, 1 D. F. & J. 257.

Former shareholders are entitled to become petitioners, on the ground that they might be liable as contributories, *Times Fire Insur. Co.*, 8 Jur. N. S. 111, 30 Beav. 596. Similarly, an unregistered transferee of scrip certificates was admitted as a petitioner, on his undertaking to do all necessary acts to make himself a legal shareholder, *ex parte Ellis*, 34 L. J., Ch. 237.

The holder of paid-up shares in a limited company is not *ipso facto* disqualified from being a petitioner; but to obtain a winding up order he must satisfy the court that the company has ceased to carry on its business, and that the assets of the company are sufficient, after payment of its debts, to produce a surplus for division among the shareholders, *Patent Artificial Stone Co.*, 34 Beav. 185; *Lancashire Brick and Tile Co.*, ib. 330. But in *National Savings Bank Association*, 1 Ch. 547, the order was granted without any such special proof.

A petition by a shareholder in arrear of calls will be dismissed with costs, *European Life Assur. Socy.*, 10 Eq. 403.

Shareholder's petition not allowed to be converted into creditor's petition, *Spence's Cement Co.*, 9 Eq. 9.

Order made on petition of executors, *Norwich Yarn Co.*, 12 Bear. 366.

A creditor who has presented and advertised a petition is entitled to withdraw it, and if he brings it to a hearing, after an offer to pay his debt and costs, he will not be allowed costs incurred after such offer; *Times Life Assur. Co.*, 9 Eq. 382. *Home Assur. Assocn.*, 12 Eq. 59. *Hereford &c. Engineering Co.*, 17 Eq. 423.

In *Humber Ironworks Company*, 2 Eq. 15, the Master of the Rolls enunciated the beneficial rule, that where a petition to wind up a company was dismissed, the petitioners would be ordered to pay the costs of the company and of every other person against whom a personal charge is brought, and who appears and disproves the charge and is otherwise free from blame, but not of any other person appearing either to support or oppose the petition. If, on the contrary, the winding-up order was made, then the petitioners and the company would have their costs out of the estate, and shareholders and creditors who appeared to support the petition would have one set of costs between them. On the other hand, in *European Banking Co.*, 2 Eq. 521, Vice-Chancellor Kindersley said, that where a petition was dismissed with costs he should, in a proper case, allow one set of costs to the shareholders who appeared against the petition, as well as the costs of the company. He also allowed the costs of the provisional liquidators. See also *Marlborough Club Co.*, 1 Eq. 216. In *Anglo-Egyptian Navigation Co.*, 8 Eq. 660, V.-C. James held (approving a previous decision of V.-C. Stuart) that though generally only one set of costs will be given to the same class of persons opposing, yet this rule is not inflexible, and the court will consider the circumstances of each particular case. A shareholder opposing unsuccessfully was disallowed his costs, *Lond. and Mediterranean Bank*, 1 W. N. 206. See further as to costs, *Rail. Finance Co.*, 14 W. R. 785., *G. N.*

Copper Mining Co. lb 705., *Anglo-Greek Steam Co.*, 2 Eq. 1, in which case a director personally assailed but unsuccessfully, was held entitled to appear separately and have his costs. *Imperial Guardian Assur. Socy.*, 9 Eq. 447.

In a winding up the petitioner's costs are the first charge on the estate. *Audley Hall Cotton Spinning Co.*, 6 Eq. 245. without set-off against any calls that may become due from the petitioner as a contributory. *Gen. Exchange Bank*, 4 Eq. 138.

As to title, advertisement, service, and verification of the petition, see Part II. of this App., rules 1, 2, 3, 4; forms, *ib.* sch. 3, nos. 1, 2.

Power of court.

LXXXIII. Any judge of the High Court of Chancery may do in chambers any act which the court is hereby authorised to do; and the Vice-Warden of the Stannaries may direct that a petition for winding up a company be heard by him at such time and at such place within the jurisdiction of the Stannaries, or within or near to the place where the registered office of the company is situated, as he may deem to be convenient to the parties concerned, or (with the consent of the parties concerned) at any place in England; and all orders made thereupon shall have the same force and effect as if they had been made by the Vice-Warden sitting at Truro or elsewhere within the jurisdiction of the court, and all parties and persons summoned to attend at the hearing of any such petition shall be compellable to give their attendance before the Vice-Warden by like process and in like manner as at the hearing of any cause or matter at the usual sitting of the said court; and the registrar of the court may, subject to exception or appeal to the Vice-Warden as here-

tofore used, do and exercise such the like acts and powers in the matter of winding up as he is now used to do and exercise in a suit on the equity side of the said court.

This section is amended by s. 38 of the Stannaries Act, 1869 (32 & 33 Vict. c. 19), which enacts that the Vice-Warden may direct that petitions shall be heard by him at such time or place as he may think fit within the Stannaries or within or near to the place where the registered or other chief office of the company is situate, or if such office be distant 150 miles or more from Truro (measured by the public railways), then in London or Westminster; or with the consent of the party or parties petitioning, and of the company represented by its secretary purser or other proper officer, the hearing may be in any part of England; and all orders made by the Vice-Warden on such hearing in any of the above cases shall be as valid and effectual as if they had been made at Truro.

Commencement of winding up by court.

LXXXIV. A winding up of a company by the court shall be deemed to commence at the time of the presentation of the petition for the winding up.

The decision of the Master of the Rolls in *Emmerson's case*, 2 Eq. 231, based on this section, and ss. 98, 114, and 157, in effect makes the *advertisement*, and not the *presentation* of the petition, the practical commencement of the winding up. "The first appearance of the advertisement "determines, *ipso facto*, the position of all the parties, and "must be treated as notice to all the world. From the "day on which the advertisement appears all parties are "bound, but up to that time it is open to all parties to deal "exactly as if the company were not bound to be wound up;

"assuming, of course, the transaction to be perfectly *bonâ* "*fide* in the strictest sense of the term, *ibid.* 233."

Where several petitions have been presented the order and consequently the commencement of the winding up dates from the earliest. *Kent* v. *Freehold Brickmaking Co.*, 3 Ch. 492.

Court may grant injunction.

LXXXV. The court may, at any time after the presentation of a petition for winding up a company under this Act, and before making an order for winding up the company, upon the application of the company, or of any creditor or contributory of the company, restrain further proceedings in any action suit or proceeding against the company, upon such terms as the court thinks fit; the court may also at any time after the presentation of such petition, and before the first appointment of liquidators, appoint provisionally an official liquidator of the estate and effects of the company.

Injunction granted against execution, *Waterloo Life Co.* 31 Beav. 589; *Great Eastern Steam Ship Co.*, 39 L. T. 406.

Under this section the court may restrain a sale by the sheriff of the property of the company, seized under a fi. fa. before the presentation of the petition for winding up, *Hill Pottery Co.*, 1 Eq. 649; *Plas-Yn-Mhowys Coal Co.*, 4 Eq. 689; but the court doubted whether it had any power to restrain an extent by the crown, *English Joint Stock Bank*, W. N. 1866, 199.

Where a winding-up petition is about to be presented creditors' actions will be restrained on a motion *ex parte*, the usual undertaking as to damages being given, *Lond. and Suburban Bank*, 19 W. R. 950.

As to appointment of provisional liquidator, *Rockhall Fishing, &c., Co.*, 11 W. R. 184: such a liquidator is not entitled to appear on the hearing of the petition, *General International Agency Co.*, 34 L. J., Ch. 327, 13 W. R. 363.

The court will not as a rule appoint a provisional liquidator before the hearing of a petition for winding up, unless the company consent, because by doing so it might paralyse all the affairs of the company, and yet refuse afterwards to make the winding-up order at all. *Emmerson's case*, 2 Eq. 231; *Cilfoden Building Socy.*, 3 Ch. 462. See, too, *Rail. Finance Co.*, 14 W. R. 754.

As to application for appointment of provisional liquidator, see rule 15 in Part II. of this App.

See p. 182, ss. 87, 163, 197, 201, and notes.

Course to be pursued by court on hearing petition.

LXXXVI. Upon hearing the petition the court may dismiss the same with or without costs, may adjourn the hearing conditionally or unconditionally, and may make any interim order, or any other order that it deems just.

Creditors and contributories alone have a right to be heard on an appeal from a winding-up order, though the court below may choose to hear other persons interested in the property of the company as *amici curiæ*, *Bradford Navigation Co.*, 5 Ch. 600.

Order for continuing a voluntary winding up under supervision, discharged and petition re-heard without fresh advertisement, on service and consent of all parties entitled to be served. *Patent Floor Cloth Co.*, 8 Eq. 664.

As to concurrent petitions in different branches of the court, *Brit. Gas Co.*, 13 W. R. 649, 11 Jur., N. S. 559; *Consold. Bank*, 14 L. T., N. S. 656.

Two companies cannot be included in the same order, *Shields Marine Association*, 16 W. R. 69.

An order for winding up, made by agreement between

the official liquidator and the petitioner, is not a consent order as against the other contributories, *Anglo-Californian Gold Mining Co.*, 8 Jur. N. S. 129, 31 L. J., Ch. 238.

Advertisement of order, and summons to proceed with winding up, Part II. of this App., rules 6, 7. Forms of order, *ibid.*, sch. 3, nos. 3, 4. Form of advertisement of order, *ibid*, no. 5.

As to costs see note to s. 82.

Actions and suits to be stayed after order for winding up.

LXXXVII. When an order has been made for winding up a company under this Act, no suit action or other proceeding shall be proceeded with or commenced against the company, except with the leave of the Court, and subject to such terms as the Court may impose.

See s. 163 and note. *Ex parte N. Staffordshire R. Co.*, 19 Eq. 60.

Leave under the circumstances granted to first mortgagees to file a bill for foreclosure against the company. *St. Cuthbert's Lead Smelting Co.*, 35 Beav. 384.

Leave given to enforce answer in suit against company in course of winding up under supervision. *Thames Plate Glass Co.* v. *Land and Sea Telegraph Co.*, 11 Eq. 248. In such a case, the Court of Appeal will not interfere with the discretion of the court below, *ib.* 6 Ch. 643. Leave under circumstances to proceed with suit, *Wyley* v. *Exhall Coal Mining Co.*, 33 Beav. 539; and see *ex parte Bateman*, 15 W. R. 118, 245. With action, *re Joseph Peace & Co.*, W. N. 1873, 127.

As to costs where action against the company is successful. *Bailey and Leatham's case*, 8 Eq. 94.

Copy of order to be forwarded to registrar.

LXXXVIII. When an order has been made for winding up a company under this Act, a copy of such order shall forthwith be forwarded by the company

to the Registrar of Joint-Stock Companies, who shall make a minute thereof in his books relating to the company.

The order is notice of discharge to the servants of the company. *Chapman's case*, 1 Eq., 346. Not where business continued. *Ex parte Harding*, 3 Eq., 341.

Power of court to stay proceedings.

LXXXIX. The Court may at any time after an order has been made for winding up a company, upon the application by motion of any creditor or contributory of the company, and upon proof to the satisfaction of the Court that all proceedings in relation to such winding up ought to be stayed, make an order staying the same, either altogether or for a limited time, on such terms and subject to such conditions as it deems fit.

Proceedings stayed, dissentient shareholder being allowed an opportunity to retire. *S. Barrule Slate Quarry Co.*, 8. Eq. 688, and see *Bristol Victoria Pottery Co.*, W. N. 1872, 85. The Court can only, under this section, stay *all* proceedings, since it can stay any particular proceedings by its power over the official liquidators. *European Assurance Society*, W. N., 1872, 85.

Merely alleged contributors cannot move. *Continental Bank*, 15 W. R. 548.

Effect of order on share capital of company limited by guarantee.

XC. When an order has been made for winding up a company limited by guarantee and having a capital divided into shares, any share capital that may not have been called up, shall be deemed to be assets of the company, and to be a debt (in England and in Ireland of the nature of a specialty) due to the com-

pany from each member to the extent of any sums that may be unpaid on any shares held by him, and payable at such time as may be appointed by the Court.

A doubt has been raised in the American courts whether, in the absence of any statutory enactment, unpaid calls can be made available for payment of debts. In the case of a company limited by shares, the question is settled by section 38. In the case of a company limited by guarantee, the doubt might have been raised; this section, therefore, declares that unpaid calls are, in such a company, to be deemed part of its assets, and be payable at such time as may be appointed by the court.

For voluntary winding up of such a company, see section 134.

Court may have regard to wishes of creditors or contributories.

XCI. The Court may, as to all matters relating to the winding up, have regard to the wishes of the creditors or contributories, as proved to it by any sufficient evidence, and may, if it thinks it expedient, direct meetings of the creditors or contributories to be summoned held and conducted in such manner as the Court directs, for the purpose of ascertaining their wishes, and may appoint a person to act as chairman of any such meeting, and to report the result of such meeting to the Court; in the case of creditors, regard is to be had to the value of the debts due to each creditor, and in the case of contributories to the number of votes conferred on each contributory by the regulations of the company.

See notes to ss. 79 and 147.

Western of Canada Oil, &c., Co., 17 Eq. 1.

The dicta in *Brighton Hotel Co.*, 6 Eq. 339, and *Langley Mills Co.*, 12 Eq. 26, probably go too far.

See further *Lonsdale Ironstone Co.*, 16 W. R. 601. *Ori-*

ental Commercial Bank, 14 L. T. (N. S.) 753, 15 *ib.* 8, as to wishes of majority of creditors; *Madras Coffee Co.*, 17 W. R. 643; *Union Hill Silver Co.* 22 L. T. (N. S.) 400 (petition by single dissentient shareholder).

Where the Court has not power to make a winding up order, it has not power to direct a meeting to be held. *Joint-Stock Coal Co.*, 8 Eq. 146.

See Part II. of this App. rules 45—47; forms, *ib.*, sch. 3, nos. 45—48.

Official Liquidators.

Appointment of official liquidator.

XCII. For the purpose of conducting the proceedings in winding up a company, and assisting the Court therein, there may be appointed a person or persons to be called an official liquidator or official liquidators; and the Court having jurisdiction may appoint such person or persons, either provisionally or otherwise, as it thinks fit, to the office of official liquidator or official liquidators; in all cases, if more persons than one are appointed to the office of official liquidator, the Court shall declare whether any act hereby required or authorized to be done by the official liquidator is to be done by all or any one or more of such persons. The Court may also determine whether any and what security is to be given by any official liquidator on his appointment; if no official liquidator is appointed, or during any vacancy in such appointment, all the property of the company shall be deemed to be in the custody of the Court.

See p. 183.

The official liquidator will not be interfered with by the appointment of a receiver. *Bank of Hindustan* v. *Coleman*, W. N. 1866, 306.

The Court of Appeal will not interfere with the discretion of the primary judge in the appointment of an official liquidator. *International Contract Co.*, 1 Ch. 523; *London and Mediterranean Bank*, ib. 525; *Albert Average Assurance Association*, 5 Ch. 597; compare *Perry* v. *Oriental Hotels Co.*, ib. 420. See the observations in *N. Assam Tea Co.*, ib. 644, on the rule said to be laid down by Lord Romilly and V.-C. Malins as to preference of nominee of petitioner.

Where one company had absorbed another, liquidator of the first held to be the most proper person to be appointed a liquidator of the second. *Western Life Assurance Society*, 5 Ch. 396; compare *British Nation Assurance Society*, W. N., 1872, 103.

Provision is made in the Stannaries Act, 1869 (32 & 33 Vict., c. 191, s. 33,) for the registrar acting in certain cases as official liquidator.

See Part II. of this App. rules as to official liquidator, 8—19. Forms as to liquidators, *ib.*, sch. 3, nos. 6, 7, 8, 9, 10, 11, 15.

Resignations, removals, filling up vacancies, and compensation.

XCIII. Any official liquidator may resign or be removed by the Court on due cause shown: and any vacancy in the office of an official liquidator appointed by the Court shall be filled by the Court: there shall be paid to the official liquidator such salary or remuneration, by way of percentage or otherwise, as the Court may direct; and if more liquidators than one are appointed, such remuneration shall be distributed amongst them in such proportions as the Court directs.

As to remuneration, *Cannan's claim*, 7 Eq. 104. Of joint liquidators, *Langham Hotel Co.*, 17 W. R. 463.

See Part II. of this App., rule 18, and regulation as to remuneration printed, 3 Ch. lxiv.

Style and duties of official liquidator.

XCIV. The official liquidator or liquidators shall be described by the style of the official liquidator or official liquidators of the particular company in respect of which he is or they are appointed, and not by his or their individual name or names; he or they shall take into his or their custody or under his or their control, all the property effects and things in action to which the company is or appears to be entitled, and shall perform such duties in reference to the winding up of the company as may be imposed by the Court.

Position and duties of official liquidator, *Gooch's case*, 7 Ch. 207.

Powers of official liquidator.

XCV. The official liquidator shall have power, with the sanction of the Court, to do the following things:

Power of official liquidator to approve of number of shares, *Bermingham* v. *Sheridan*, 33 Beav. 660.

To bring or defend any action suit or prosecution or other legal proceeding civil or criminal in the name and on behalf of the company:

Turquand v. *Kirby*, 4 Eq. 123.

To carry on the business of the company, so far as may be necessary for the beneficial winding up of the same:

To sell the real and personal and heritable and movable property effects and things in action of the company by public auction or private contract, with power to transfer the whole

thereof to any person or company, or to sell the same in parcels :

The liquidator is the proper person to be appointed receiver on bill filed by mortgagee of property of the company, *Perry* v. *Oriental Hotels Co.*, 5 Ch. 421. As to priorities in application of proceeds of sale of mortgaged property, *Marine Mansions Co.*, 4 Eq. 601 ; *Oriental Hotels Co.*, 12 Eq. 126.

Part II. of this App., rule 32.

To do all acts, and to execute, in the name and on behalf of the company, all deeds receipts and other documents, and for that purpose to use, when necessary, the company's seal :

To prove rank claim and draw a dividend in the matter of the bankruptcy or insolvency or sequestration of any contributory, for any balance against the estate of such contributory, and to take and receive dividends in respect of such balance, in the matter of bankruptcy or insolvency, or sequestration, as a separate debt due from such bankrupt or insolvent, and rateably with the other separate creditors :

Application of this enactment in winding up of unregistered company, *Ex parte Ball*, 23 W. R. 119.

To draw accept make and endorse any bill of exchange or promissory note in the name and on behalf of the company, also to raise upon the security of the assets of the company from time to time any requisite sum or sums of money : and the drawing accepting making or

endorsing of every such bill of exchange or promissory note as aforesaid on behalf of the company, shall have the same effect with respect to the liability of such company as if such bill or note had been drawn accepted made or endorsed by or on behalf of such company in the course of carrying on the business thereof:

Smith, Fleming & Co.'s case, Gledstanes & Co.'s case, 1 Ch. 538.

To take out, if necessary, in his official name, letters of administration to any deceased contributory, and to do in his official name any other act that may be necessary for obtaining payment of any moneys due from a contributory or from his estate, and which act cannot be conveniently done in the name of the company; and in all cases where he takes out letters of administration, or otherwise uses his official name for obtaining payment of any moneys due from a contributory, such moneys shall for the purpose of enabling him to take out such letters or recover such moneys, be deemed to be due to the official liquidator himself:

To do and execute all such other things as may be necessary for winding up the affairs of the company and distributing its assets.

Liquidators are in the position of trustees for the shareholders, and have no power to bind by admissions their *cestuis que trustent*. *Empire Corporation*, 17 W. R. 431.

Where an appeal by the official liquidator is dismissed with costs to be paid by the official liquidator, he will have to pay them whether he gets them out of the estate or not. *Ferrao's case*, 9 Ch. 355; and see *Robinson's case*, 4 Ch. 335.

Where the official liquidator is respondent, and his costs are not payable by any party to the appeal, they will come out of the estate, but he will be left to apply for payment of them to the Court below. *Wescomb's case*, 9 Ch. 553.

Discretion of official liquidator.

XCVI. The court may provide by any order that the official liquidator may exercise any of the above powers without the sanction or intervention of the Court, and where an official liquidator is provisionally appointed, may limit and restrict his powers by the order appointing him.

As to direction or sanction of judge, Part II. of this App. rules 48—50, Forms *ibid.*, sch. 3, Nos. 49—52.

S. E. of Portugal R. Co., 17 W. R. 809, 21 L. J. (N. S.) 220.

Appointment of solicitor to official liquidator.

XCVII. The official liquidator may, with the sanction of the Court, appoint a solicitor or law agent to assist him in the performance of his duties.

Form of sanction, Part II. of this App., sch. 3, no. 12.

It is an invariable rule that a liquidator who is a solicitor shall not employ his partner as his solicitor in the winding-up, unless the partner is willing to act without remuneration; *Universal Private Telegraph Co.*, 19 W. R. 297.

As to costs of solicitor *Re Massey*, 9 Eq. 367; *Trueman's Estate*, 14 Eq. 278. As to lien, *ex parte Pulbrook*, 4 Ch. 627. As to taxation, *ex parte Evans*, 11 Eq., 151.

Ordinary Powers of Court.

Collection and application of assets.

XCVIII. As soon as may be after making an order for winding up the company, the Court shall settle a list of contributories, with power to rectify the register of members in all cases where such rectification is required in pursuance of this Act, and shall cause the assets of the company to be collected and applied in discharge of its liabilities.

See s. 153, and note.

The court has power to rectify the register as well after as before the date of the winding up order, *Reese River Mining Co.* v. *Smith*, L. R., 4 H. L. 64; and the power referred to is the power conferred by s. 35; *Sichell's case*, 3 Ch. 119.

The costs of a contest by a person unsuccessfully disputing his liability to be a contributory must, as a rule, be paid by the contributory; *Gower's case*, 6 Eq. 77; *Andrew's case*, 3 Ch. 161.

But in a representative case the costs of all parties will, on a first hearing, come out of the estate, *Walker's case*, 2 Eq. 554; though not on an unsuccessful appeal, *Sichell's case*, 3 Ch. 119.

A person successfully disputing his liability will, in a proper case, have his costs out of the estate. *Nation's case*, 3 Eq. 77; but a person unsuccessfully disputing his liability will, except under special circumstances, have to pay the costs. *Birkbeck Assce. Co.*, 13 W. R. 380, 2 Dr. & Sm. 321.

Motion to rectify adjourned into chambers to be dealt

with on settlement of the list. *Buckridge's case*, 13 W. R. 677.

The assets are applicable in discharge of the liabilities *as they exist at the date of the order*, and from that time the Statute of Limitations does not run against a creditor. But if he delays to prove, he must take his chance and cannot disturb previous dividends. *General Rolling Stock Co.*, 7 Ch. 646.

Servants of a company ordered to be wound up are not entitled to payment in full, in priority to other creditors, of any part of the wages or salary due to them at the date of the winding up. *Chapman's case*, 1 Eq., 346. But the Stannaries Act, 1869 (32 & 33 Vict. c. 19, s. 26), gives priority to the wages of miners and other labourers employed by a company within that Act.

As to rights of surety of company, see *Gray* v. *Seckham*, 7 Ch. 680.

Part II. of this App. rules 29—31. Forms *ibid*, sch. 3, nos. 24—32.

Provision as to representative contributories.

XCIX. In settling the list of contributories the court shall distinguish between persons who are contributories in their own right and persons who are contributories as being representatives of or being liable to the debts of others; it shall not be necessary, where the personal representative of any deceased contributory is placed on the list, to add the heirs or devisees of such contributory, nevertheless such heirs or devisees may be added as and when the court thinks fit.

As to heirs and devisees, see ss. 76 and 106, and explanation above, p. 173.

Power of court to require delivery of property.

C. The court may, at any time after making an order for winding up a company, require any contributory for the time being settled on the list of contributories

trustee receiver banker or agent or officer of the company to pay deliver convey surrender or transfer forthwith, or within such time as the court directs, to or into the hands of the official liquidator, any sum or balance books papers estate or effects which happen to be in his hands for the time being, and to which the company is *primâ facie* entitled.

As to the jurisdiction under this section, see *Hollinsworth's case*, 3 De G. & S. 102; *Cox's case, ib.* 180 (decided on s. 66 of 11 & 12 Vict. c. 45, which did not contain the word "officer"); *Ex parte Hawkins*, 3 Ch. 787; *Imp. Land Co. of Marseilles*, 10 Eq. 298.

Form of order, Part II. of this App. sch. 3, no. 13.

Power of court to order payment of debts by contributory.

CI. The court may, at any time after making an order for winding up the company, make an order on any contributory for the time being settled on the list of contributories, directing payment to be made, in manner in the said order mentioned, of any moneys due from him or from the estate of the person whom he represents to the company, exclusive of any moneys which he or the estate of the person whom he represents may be liable to contribute by virtue of any call made or to be made by the court in pursuance of this part of the Act; and it may, in making such order, when the company is not limited, allow to such contributory by way of set off any moneys due to him or the estate which he represents from the company on any independent dealing or contract with the company, but not any moneys due to him as a member of the company in respect of any dividend or profit;

Provided that when all the creditors of any company whether limited or unlimited are paid in full, any moneys due on any account whatever to any contributory from the company may be allowed to him by way of set-off against any subsequent call or calls.

Form of order, Part II. of this App., sch. 3, no. 13.

This section greatly facilitates the realisation of the assets of a company by enabling the Court to make a peremptory order on a contributory to pay at once any debt due from him to the company, instead of putting the company to the expense of bringing an action. It applies only in case of an actual debt, and does not include cases in which persons may be made liable for misconduct under s. 165. *Felton's Executors' case*, 1 Eq. 219.

It will be recollected that sub-section (7) of section 38, provides, "No sum due to any member of a company, in his character of a member, by way of dividends, profits, or otherwise, shall be deemed to be a debt of the company, payable to such member in a case of competition between himself and any other creditor not being a member of the company; but any such sum may be taken into account for the purpose of the final adjustment of the rights of the contributories amongst themselves."

This section in accordance with that enactment declares that, "In making an order on a contributory for payment of a *debt* due from him to the company, the Court may, *when the company is not limited*, allow to such contributory, by way of set-off, any moneys due to him or the estate which he represents from the company on any independent dealing or contract with the company, but not any moneys due to him as a member of the company in respect of any dividend or profit: Provided that when all the creditors of any company, whether limited or unlimited, are paid in full, any moneys due on any account whatever to any contribu-

tory from the company may be allowed to him by way of set-off against any subsequent call or calls."

An example will show what is meant. Suppose the West Charlton Banking Company to be *an unlimited* banking company, and A. B. to owe the company 1000*l.* for money lent, while the company owes him 500*l.* for work done by him as a builder on their banking-house; further, let A. B. be a member of the company, and suppose him not to have received 50*l.* due in respect of the last half-yearly dividend on his shares. Now, the effect of the above section is this – the company is wound up, and inasmuch as it is unlimited, the Court makes an order on A. B. for payment to the company of 500*l.*, the difference between the 1000*l.* due from him to the company, and the 500*l.* due to him from the company. If the company were *limited* A. B. would be compelled to pay up at once the whole 1000*l.*, and would be left to scramble with the other creditors for the repayment of the 500*l.* due to him. In neither case can the 50*l.* due by way of dividend be taken into consideration till the creditors have been fully paid.

The section gave rise at first to great alarm by leading to the inference that, inasmuch as the Act, in the *collection* of the assets, makes a distinction between an ordinary creditor and a creditor who is also a member, placing the latter in a worse position than the former, it intended to maintain the same distinction in the *distribution* of the assets. It was feared that members of an incorporated company were in the position of partners in a bankrupt firm, and were prohibited from proving their debts in competition with the creditors of the company; in other words, were altogether postponed to the general creditors.

In the case of a banking company, the effect of such a rule would have been most startling. Every depositor who had the misfortune to be a member would have been compelled to pay all his calls, and yet could not have shared with the creditors in the distribution of a dividend.

On principle, it was clear such a doctrine could not be

sustained; members of a corporation are not partners with each other, and the debts of the company are not, as in the case of an unincorporated firm, in any respect the debts of the individual members.

The question, however, was set at rest by the decision in *Grissell's case*, 1 Ch. 528, in which the Lord Chancellor showed conclusively that members of companies are entitled to satisfaction of their debts *pari passu* with the rest of the creditors, declaring "that the Act would be a complete snare upon members of companies who were creditors, if they were to be postponed to the creditors who were not members."

A contributory in a limited company cannot set off against a call made in the winding up a debt due to him from the company. *Grissell's case*, ubi supra; and *Black & Co.'s case*, 8 Ch. 254, disapproving of *Brighton Arcade Co.* v. *Dowling*, L. R., 3 C. P. 175, a case of voluntary liquidation; see especially the observations of Lord Selborne thereon. Nor can he set off a debt due to him from the company against a call made before the winding up. *Calisher's case*, 5 Eq. 214; *ex parte Barnett*, 44 L. J. Ch. 233.

The case of a bankrupt contributory is an exception to this rule, as the provisions of the Bankruptcy Act (s. 171 of 12 & 13 Vict. c. 106, substantially re-enacted in s. 39 of the Bankruptcy Act, 1869), apply. *In re Duckworth*, 2 Ch. 578, and that whether the proceedings are in bankruptcy or in the winding up. *Ex parte Strang*, 5 Ch. 492.

In an unlimited company, on the contrary, set off may be allowed, for (as observed by Lord Chelmsford in *Grissell's case*), since the member is liable to contribute to any amount till all the liabilities of the company are satisfied, it signifies nothing to the creditor whether set off is allowed or not. See *Gibbs' & West's case*, 10 Eq. 312.

The point left undetermined in *Calisher's case*, 5 Eq. 214, namely, whether a limited company has power to contract with one of its members, so as to take him, in the event of a winding up, out of the law laid down in *Grissell's case*,

was decided against the existence of such power in *Black & Co.'s case*, ubi supra.

In an action brought by the liquidator of a limited company being wound up under supervision against a member of the company, a debt due to him from the company before the resolution for the voluntary winding up, cannot be set off against a debt to the company incurred by him after the resolution. *Sankey Brook Coal Co. v. Marsh*, L. R. 6 Ex. 185.

The set off against calls mentioned in the proviso at the end of the section refers to set off of dividends and profits.

The right of a creditor who is not a member to set off is not interfered with by this section. *Anderson's case*, 3 Eq. 337.

Power of court to make calls.

CII. The court may, at any time after making an order for winding-up a company, and either before or after it has ascertained the sufficiency of the assets of the company, make calls on and order payment thereof by all or any of the contributories for the time being settled on the list of contributories, to the extent of their liability, for payment of all or any sums it deems necessary to satisfy the debts and liabilities of the company, and the costs charges and expenses of winding it up, and for the adjustment of the rights of the contributories amongst themselves, and it may, in making a call, take into consideration the probability that some of the contributories upon whom the same is made may partly or wholly fail to pay their respective portions of the same.

Calls may be made before the debts are established, if there is reason to believe that the money will be required. *Contract Corporation*, 2 Ch. 95. *Barned's Banking Co.*, 36 L. J. (Ch.) 215.

A call will not be stayed for the purpose of enabling a

shareholder to bring forward evidence in opposition to the call, except on condition of his paying the amount due from him into Court. *Ex parte Oakes & Peake*, W. N., 1866, 361.

Interest is payable on overdue call. *Ex parte Luntott*, 4 Eq. 184; *Barrow's case*, 3 Ch 784.

An agreement by a shareholder in a company which is being wound up compulsorily, that for a pecuniary equivalent he will endeavour to postpone the making of a call or will support a creditor's claim is illegal. *Elliott v. Richardson*, L. R., 5 C. P. 744.

Part II. of this App., rules 33—35, forms, sch. 3, nos. 33—39.

See note to preceding section.

Power of court to order payment into Bank.

CIII. The court may order any contributory, purchaser, or other person from whom money is due to the company, to pay the same into the Bank of England, or any branch thereof, to the account of the official liquidator instead of to the official liquidator, and such order may be enforced in the same manner as if it had directed payment to the official liquidator.

Regulation of account with court.

CIV. All moneys, bills, notes, and other securities paid and delivered into the Bank of England or any branch thereof in the event of a company being wound up by the court, shall be subject to such order and regulation for the keeping of the account of such moneys and other effects, and for the payment and delivery in, or investment and payment and delivery out, of the same as the court may direct.

Part II. of this App. As to payment in of moneys and deposit of securities, rules 36—41, forms, sch. 3, nos. 14, 40—44. Delivery out of securities, and payment out and investment of moneys, rules 42—44, forms, sch. 3 no. 44.

Provision in case of representative contributory not paying moneys ordered

CV. If any person made a contributory as personal representative of a deceased contributory makes default in paying any sum ordered to be paid by him, proceedings may be taken for administering the personal and real estates of such deceased contributory, or either of such estates, and of compelling payment thereout of the moneys due.

Ss. 76, 95.

Order conclusive evidence

CVI. Any order made by the Court in pursuance of this Act upon any contributory shall, subject to the provisions herein contained for appealing against such order, be conclusive evidence that the moneys, if any, thereby appearing to be due or ordered to be paid are due, and all other pertinent matters stated in such order, are to be taken to be truly stated as against all persons, and in all proceedings whatsoever, with the exception of proceedings taken against the real estate of any deceased contributory, in which case such order shall only be *primâ facie* evidence for the purpose of charging his real estate, unless his heirs or devisees were on the list of contributories at the time of the order being made.

Court may exclude creditors not proving within certain time.

CVII. The Court may fix a certain day or certain days on or within which creditors of the company are to prove their debts or claims, or to be excluded from the benefit of any distribution made before such debts are proved.

Rules as to proof of debts, Part II. of this App., rules 20—28, forms ibid., sch. 3, nos. 16—23.

Proceedings in the court

CVIII. If in the course of proving the debts and

claims of creditors in the Court of the Vice-Warden of the Stannaries any debt or claim is disputed by the official liquidator or by any creditor or contributory, or appears to the Court to be open to question, the Court shall have power, subject to appeal as hereinafter provided, to adjudicate upon it, and for that purpose the said Court shall have and exercise all needful powers of inquiry touching the same by affidavit or by oral examination of witnesses or of parties, whether voluntarily offering themselves for examination or summoned to attend by compulsory process of the Court, or to produce documents before the Court; and the Court shall also have power, incidentally, to decide on the validity and extent of any lien or charge claimed by any creditor on any property of the company in respect of such debt, and to make declarations of right, binding on all persons interested; and for the more satisfactory determination of any question of fact, or mixed question of law and fact arising on such inquiry, the Vice-Warden shall have power, if he thinks fit, to direct and settle any action or issue to be tried either on the common law side of his Court, or by a common or special jury, before the justices of assize in and for the counties of Cornwall or Devon, or at any sitting of one of the Superior Courts in London or Middlesex, which action or issue shall accordingly be tried in due course of law, and without order or further consent of parties; and the finding of the jury in such action or issue shall be conclusive of the facts found, unless the judge who tried it makes known to the Vice-Warden that he was not satisfied with the finding, or unless it

of the Vice-Warden of the Stannaries on proof of debts.

appears to the Vice-Warden that, in consequence of miscarriage accident or the subsequent discovery of fresh material evidence, such finding ought not to be conclusive.

Court to adjust rights of contributories.

CIX. The Court shall adjust the rights of the contributories among themselves, and distribute any surplus that may remain among the parties entitled thereto.

Where there is a surplus, fully paid-up shareholders are entitled to have the difference between the amount paid on their shares and the amount paid on the other shares in the company returned to them before the distribution; *Ex parte Mitude*, 6 Ch. 51. In *Holyford Mining Co.*, Ir. L. R., 3 Eq. 208, the circumstances were special; also, in *Eclipse Gold Mining Co.*, 18 Eq. 490, where the surplus arose entirely from payments made by a set of new shareholders.

See s. 133 (9) (10), and note.

Court to order costs.

CX. The court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the estate of the company of the costs charges and expenses incurred in winding up any company in such order of priority as the Court thinks just.

The costs of the winding-up are a charge on the assets of the company in priority to all other claims, as is expressly enacted in the case of a voluntary winding up. See s 144.

From the judgments of Lord Chelmsford and Lord Cairns in *Webb* v. *Whiffin*, L. R., 5 H. L. 711, it appears that unless all the contributions of the existing members are swallowed up in payment of the costs, the past members

cannot be called on to contribute to them; a different view had previously been taken in *Marsh's case*, 13 Eq. 388, by V. C. Bacon, who thought that the court had a discretion in dealing with them, founding his judgment on some expressions of Lord Hatherley's in *Brett's case*, 6 Ch. 800.

The remuneration of the official liquidator is not to be paid till all the costs of the winding up have been paid in full. *Re Massey*, 9 Eq. 367.

Dissolution of company.

CXI. When the affairs of the company have been completely wound up, the Court shall make an order that the company be dissolved from the date of such order, and the company shall be dissolved accordingly.

Part II. of this App., rules 65–67, forms *ibid*, sch. 3, nos. 55, 56.

Registrar to make minute of dissolution of company

CXII. Any order so made shall be reported by the official liquidator to the registrar, who shall make a minute accordingly in his books of the dissolution of such company.

Penalty on not reporting dissolution of company

CXIII. If the official liquidator makes default in reporting to the registrar, in the case of a company being wound up by the Court, the order that the company be dissolved, he shall be liable to a penalty not exceeding five pounds for every day during which he is so in default.

Petition to be lis pendens

CXIV. *Any petition for winding up a company by the Court under this Act, shall constitute a lis pendens within the terms of the Act passed in the session holden in the second and third years of the reign of her present Majesty, chapter eleven, and intituled,*

"*An Act for the better Protection of Purchasers against Judgments, Crown Debts, Lis Pendens, and Fiats in Bankruptcy,*" *provided the same is duly registered in manner required by such Act concerning suits in equity.*

This section is repealed by 30 & 31 Vict. c. 47, s. 1, in consequence, probably, of the decision in *Thornton's case*, W. N. 1866, 407; reversed on appeal, 2 Ch. 171.

Extraordinary Powers of Court.

Power of court to summon persons before it suspected of having property of company.

CXV. The Court may, after it has made an order for winding-up the company, summon before it any officer of the company or person known or suspected to have in his possession any of the estate or effects of the company, or supposed to be indebted to the company, or any person whom the Court may deem capable of giving information concerning the trade dealings estate or effects of the company; and the Court may require any such officer or person to produce any books, papers deeds writings or other documents in his custody or power relating to the company; and if any person so summoned, after being tendered a reasonable sum for his expenses, refuses to come before the Court at the time appointed, having no lawful impediment (made known to the Court at the time of its sitting, and allowed by it), the Court may cause such person to be apprehended, and brought before the Court for examination; nevertheless, in cases where any person

claims any lien on papers deeds or writings or documents produced by him, such production shall be without prejudice to such lien, and the Court shall have jurisdiction in the winding up to determine all questions relating to such lien.

A mere creditor of a company is not within the scope of this section; *Accidental & Marine Insur. Corporation*, 5 Eq. 22. Sister and nephew of contributory held bound to answer; *Swan's case*, 10 Eq. 675; so mother-in-law; *Fricker's case*, 13 Eq. 178. Broker summoned; *Clement's case*, ib. 179, *in notis*. Solicitors of company required to produce documents without prejudice to their lien for costs; *S. Essex Estuary Co.*, 4 Ch. 215. See also *Smith, Knight, & Co.*, ib. 421; *Druitt's case*, 14 Eq. 6; *Trower & Lawson's case*, *ib.* 8.

A summons, not a subpœna, is the proper mode of summoning a witness; *English Jt. Stock Bk.*, 3 Eq. 203.

A witness must give all the information in his power likely to afford assistance to the official liquidator, and cannot refuse to answer a question because the information sought to be elicited would be hearsay evidence; *Ottoman Bank*, 15 W. R. 1069, see also *Ex parte Bloxam*, 36 L. J. Ch. 687. Counsel for the deponent is entitled to be present and re-examine him, and the deponent his counsel and solicitors may take notes and have a copy of the proceedings; *Breech-loading Armoury Co.*, 4 Eq. 453; *Merchants' Co.*, *ibid.* 454.

Depositions taken under this section may be used as evidence against the deponent; *Pugh & Sharman's case*, 13 Eq. 566.

A mere witness is not entitled to any voice in the appointment of special examiner; *Contract Corporation*, 13 Eq. 27.

Form of summons, part II. of this App., sch. 3, no. 54.

CXVI. If, after an order for the winding-up in the Court of the Vice-Warden of the Stannaries, it appears

Special provisions as to court of

Vice-Warden of the Stannaries.

that any person claims property in or any lien legal or equitable upon any of the machinery materials ores or effects on the mine or on premises occupied by the company in connection with the mine, or to which the company was at the time of the order *primâ facie* entitled, it shall be lawful for the Vice-Warden or the registrar to adjudicate upon such claim on interpleader in the manner provided by section eleven of the Act passed in the eighteenth year of the reign of her present Majesty, chapter thirty-two; and any action or issue directed upon such interpleader may, if the Vice-Warden think fit, be tried in his Court, or at the assizes or the sittings in London or Middlesex before a judge of one of the Superior Courts, in the manner and on the terms and conditions hereinbefore provided in the case of disputed debts and claims of creditors.

Examination of parties by court.

CXVII. The Court may examine upon oath, either by word of mouth or upon written interrogatories, any person appearing or brought before them in manner aforesaid concerning the affairs dealings estate or effects of the company, and may reduce into writing the answers of every such person, and require him to subscribe the same.

Power to arrest contributory about to abscond or to remove or conceal any of his property.

CXVIII. The Court may, at any time before or after it has made an order for winding-up a company, upon proof being given that there is probable cause for believing that any contributory to such company is about to quit the United Kingdom, or otherwise abscond, or to remove or conceal any of his goods or chattels, for the purpose of evading payment of calls,

or for avoiding examination in respect of the affairs of the company, cause such contributory to be arrested, and his books papers moneys securities for moneys goods and chattels to be seized, and him and them to be safely kept until such time as the Court may order.

Arrest not ordered but goods directed to be seized; *Imperial Merc. Credit Co.*, 5 Eq. 264.

Powers of court cumulative.

CXIX. Any powers by this Act conferred on the Court shall be deemed to be in addition to, and not in restriction of, any other powers subsisting either at law or in equity, of instituting proceedings against any contributory, or the estate of any contributory, or against any debtor of the company for the recovery of any call or other sums due from such contributory or debtor, or his estate, and such proceedings may be instituted accordingly.

Enforcement of and Appeal from Orders.

Power to enforce orders

CXX. All orders made by the Court of Chancery in England or Ireland under this Act may be enforced in the same manner in which orders of such Court of Chancery made in any suit pending therein may be enforced, and for the purposes of this part of the Act the Court of the Vice-Warden of the Stanneries shall, in addition to its ordinary powers, have the same power of enforcing any orders made by it as the Court

of Chancery in England has in relation to matters within the jurisdiction of such Court, and for the last-mentioned purposes the jurisdiction of the Vice-Warden of the Stanneries shall be deemed to be co-extensive in local limits with the jurisdiction of the Court of Chancery in England.

Power to order contributories in Scotland to pay calls

CXXI. Where an order interlocutor or decree has been made in Scotland for winding up a company by the Court, it shall be competent to the Court in Scotland during session, and to the lord ordinary on the bills during vacation, on production by the liquidators of a list certified by them of the names of the contributories liable in payment of any calls which they may wish to enforce, and of the amount due by each contributory respectively, and of the date when the same became due, to pronounce forthwith a decree against such contributories for payment of the sums so certified to be due by each of them respectively, with interest from the said date till payment, at the rate of five pounds *per centum per annum*, in the same way and to the same effect as if they had severally consented to registration for execution on a charge of six days of a legal obligation to pay such calls and interest; and such decree may be extracted immediately, and no suspension thereof shall be competent, except on caution or consignation, unless with special leave of the Court or lord ordinary.

Order made in England to be enforced in Ireland and Scotland

CXXII. Any order made by the Court in England for or in the course of the winding up of a company under this Act, shall be enforced in Scotland and

Ireland in the Courts that would respectively have had jurisdiction in respect of such company if the registered office of the company had been situate in Scotland or Ireland, and in the same manner in all respects as if such order had been made by the Courts that are hereby required to enforce the same; and in like manner orders interlocutors and decrees made by the Court in Scotland for or in the course of the winding up of a company shall be enforced in England and Ireland, and orders made by the court in Ireland for or in the course of winding up of a company shall be enforced in England and Scotland by the Courts which would respectively have had jurisdiction in the matter of such company, if the registered office of the company were situate in the division of the United Kingdom where the order is required to be enforced, and in the same manner in all respects as if such order had been made by the Court required to enforce the same in the case of a company within its own jurisdiction.

Order for call by Irish Court of Bankruptcy in a winding up, remitted to it by Irish Court of Chancery, made an order of Court of *Chancery* in England; *Hollyford Copper Mining Co.*, 5 Ch. 93.

Mode of dealing with orders to be enforced by other courts.

CXXIII. Where any order interlocutor or decree made by one Court is required to be enforced by another Court, as hereinbefore provided, an office copy of the order interlocutor or decree so made shall be produced to the proper officer of the Court required to enforce the same, and the production of such office copy shall be sufficient evidence of such order

interlocutor or decree having been made, and thereupon such last-mentioned Court shall take such steps in the matter as may be requisite for enforcing such order interlocutor or decree, in the same manner as if it were the order interlocutor or decree of the Court enforcing the same.

Appeal from orders.

CXXIV. Rehearings of and appeals from any order or decision made or given in the matter of the winding up of a company by any Court having jurisdiction under this Act, may be had in the same manner and subject to the same conditions in and subject to which appeals may be had from any order or decision of the same Court in cases within its ordinary jurisdiction; subject to this restriction, that no such rehearing or appeal shall be heard unless notice of the same is given within three weeks after any order complained of has been made, in manner in which notices of appeal are ordinarily given, according to the practice of the Court appealed from, unless such time is extended by the Court of Appeal: Provided it shall be lawful for the Lord Warden of the Stannaries, by a special or general order, to remit at once any appeal allowed and regularly lodged with him against any order or decision of the Vice-Warden made in the matter of a winding up to the Court of Appeal in Chancery, which Court shall thereupon hear and determine such appeal, and have power to require all such certificates of the Vice-Warden records of proceedings below documents and papers as the Lord Warden would or might have required upon the hearing of such appeal, and to exercise all other the jurisdiction and powers of the

Lord Warden specified in the Act of Parliament passed in the eighteenth year of the reign of her present Majesty, chapter thirty-two, and any order so made by the Court of Appeal in Chancery shall be final, without any further appeal.

"Made" means "pronounced," not "drawn up;" *Risca Coal & Iron Co.*; *ex parte Hookey*, 8 Jur. N. S. 900, 31 L. J., Ch. 429.

This section does not apply to appeals from orders made on the original petition for winding up; *Universal Bank*, 1 Ch. 428.

The power of the Court of Appeal to extend the time for appealing may be exercised after the time allowed by this section for giving notice of appeal has expired; *Banner* v. *Johnston*, L. R., 5 H. L. 157. See *Re Bastow*, 37 L. J. (Ch.) 51.

The Court will extend the time where an order made is shown, by a subsequent decision of the Court of Appeal, to be erroneous in point of law; *Ebbw Vale Co.'s case*, 5 Ch. 112.

Per Cairns, L. J., "Some indulgence must be allowed in these cases, inasmuch as the issues are not so distinctly brought out in them as in cases brought before the Court by means of regular pleadings:" appeal allowed to be reheard, and fresh documentary evidence adduced. *Ex parte Pearson*, 3 Ch. 443.

Application to extend the time must be made on notice, and not *ex parte*. *Lama Italian Co.*, W.N. 1867, 119; in *Hull Forge Co.*, 15 W. R. 388, an *ex parte* application was granted, the benefit of the objection as to time being reserved to the respondent, which at the hearing prevailed; *ib.* 474.

The power of the judge to discharge an order, which turns out to be a mere nullity, is not interfered with by this section, although more than three weeks have elapsed since the making of the order. *Estates Investment Co.*, 8 Eq. 227.

As to appeals from the Stannaries Court, see Order of Court of 28th July, 1869, printed in 4 Ch. xliv.

Judicial notice to be taken of signature of officers.

CXXV. In all proceedings under this part of the Act, all Courts judges and persons judicially acting and all other officers judicial or ministerial of any Court, or employed in enforcing the process of any Court, shall take judicial notice of the signature of any officer of the Courts of Chancery or Bankruptcy in England or in Ireland, or of the Court of Session in Scotland, or of the registrar of the Court of the Vice-Warden of the Stannaries, and also of the official seal or stamp of the several offices of the Courts of Chancery or Bankruptcy in England or Ireland, or of the Court of Session in Scotland, or of the Court of the Vice-Warden of the Stannaries, when such seal or stamp is appended to or impressed on any document made, issued, or signed under the provisions of this part of the Act or any official copy thereof.

Special commissioners for receiving evidence.

CXXVI. The commissioners of the Court of Bankruptcy (a) and the judges of the County Courts in England who sit at places more than twenty miles from the General Post Office, and the commissioners of bankrupt and the assistant barristers and recorders in Ireland, and the sheriffs of counties in Scotland, shall be commissioners for the purpose of taking evidence under this Act, in cases where any company is wound up in any part of the United Kingdom, and it shall be lawful for the Court to refer the whole or any part of the examination of any witnesses under

(a) The Country District Courts of Bankruptcy were abolished by the Bankruptcy Act, 1869, s. 130.

this Act to any person hereby appointed commissioner, although such commissioner is out of the jurisdiction of the Court that made the order or decree for winding up the company; and every such commissioner shall, in addition to any power of summoning and examining witnesses, and requiring the production or delivery of documents, and certifying or punishing defaults by witnesses, which he might lawfully exercise as a commissioner of the Court of Bankruptcy judge of a County Court commissioner of bankrupt assistant barrister or recorder or as a sheriff of a county, have in the matter so referred to him, all the same powers of summoning and examining witnesses, and requiring the production or delivery of documents, and punishing defaults by witnesses, and allowing costs and charges and expenses to witnesses as the Court which made the order for winding up the company has; and the examination so taken shall be returned or reported to such last-mentioned Court in such manner as it directs.

Court may order the examination of persons in Scotland.

CXXVII. The Court may direct the examination in Scotland of any person for the time being in Scotland whether a contributory of the company or not, in regard to the estate dealings or affairs of any company in the course of being wound up, or in regard to the estate dealings or affairs of any person being a contributory of the company, so far as the company may be interested therein by reason of his being such contributory, and the order or commission to take such examination shall be directed to the sheriff of the county in which the person to be examined is residing,

or happens to be for the time, and the sheriff shall summon such person to appear before him at a time and place to be specified in the summons for examination upon oath as a witness or as a haver, and to produce any books papers deeds or documents called for which may be in his possession or power, and the sheriff may take such examination either orally or upon written interrogatories, and shall report the same in writing in the usual form to the Court, and shall transmit with such report the books papers deeds or documents produced, if the originals thereof are required and specified by the order, and otherwise such copies thereof or extracts therefrom authenticated by the sheriff, as may be necessary; and in case any person so summoned fails to appear at the time and place specified, or appearing refuses to be examined or to make the production required, the sheriff shall proceed against such person as a witness or haver duly cited, and failing to appear or refusing to give evidence or make production, may be proceeded against by the law of Scotland; and the sheriff shall be entitled to such and the like fees, and the witness shall be entitled to such and the like allowances, as sheriffs when acting as commissioners under appointment from the Court of Session, and as witnesses and havers are entitled to in the like cases according to the law and practice of Scotland. If any objection is stated to the sheriff by the witness, either on the ground of his incompetency as a witness, or as to the production required to be made, or on any other ground whatever, the sheriff may, if he thinks fit, report such objection to the

Court, and suspend the examination of such witness until such objection has been disposed of by the Court.

CXXVIII. Any affidavit affirmation or declaration required to be sworn or made, under the provisions or for the purposes of this part of this Act, may be lawfully sworn or made in Great Britain or Ireland, or in any colony island plantation or place under the dominion of Her Majesty in foreign parts, before any court judge or person lawfully authorised to take and receive affidavits affirmations or declarations, or before any of Her Majesty's consuls or vice-consuls, in any foreign parts out of Her Majesty's dominions, and all courts judges justices commissioners and persons acting judicially shall take judicial notice of the seal or stamp or signature (as the case may be) of any such court judge person consul or vice-consul, attached appended or subscribed to any such affidavit affirmation or declaration or to any other document to be used for the purposes of this part of this Act.

Affidavits, &c., may be sworn in Ireland, Scotland, or the colonies before any competent court or person.

Voluntary Winding up of Company.

CXXIX. A company under this Act may be wound up voluntarily,

Circumstances under which company may be wound up voluntarily

(1.) Whenever the period, if any, fixed for the duration of the company by the articles of association expires, or whenever the event, if any, occurs, upon the occurrence of which it is provided by the articles of association that the company is to be dissolved, and the company in

general meeting has passed a resolution requiring the company to be wound up voluntarily:

(2.) Whenever the company has passed a special resolution requiring the company to be wound up voluntarily:

(3.) Whenever the company has passed an extraordinary resolution to the effect that it has been proved to their satisfaction that the company cannot, by reason of its liabilities, continue its business, and that it is advisable to wind up the same:

For the purposes of this Act any resolution shall be deemed to be extraordinary which is passed in such manner as would, if it had been confirmed by a subsequent meeting, have constituted a special resolution, as hereinbefore defined.

A *special* resolution is a resolution passed by *three-fourths* of the members present at a meeting, and confirmed by a subsequent resolution passed by a *majority* at a meeting held at an interval of not less than fourteen days nor more than one month from the date of the first meeting. (See section 51.)

An *extraordinary* resolution is a resolution passed by *three-fourths* of the members present at a meeting, and does not require confirmation.

It will be observed that a company may be wound up under sub-section 2, whenever a *special* resolution is passed requiring the company to be wound up; while under sub-section 3, if it be wound up in pursuance of an *extraordinary* resolution, that resolution must in effect be a declaration of insolvency.

The reason for this difference is obvious; it cannot be supposed that the members of a company will declare the

company insolvent unless an overwhelming case be made out. Under such circumstances, therefore, a simple majority once established of *three-fourths* of the members is sufficient, as the delay necessary to pass a special resolution might, in such a case, be most injurious to a company. On the other hand, where no insolvency exists, it seems right to interpose a delay of not less than a fortnight, and to require the confirmation of the resolution by another meeting, before so serious a step as winding up is decided on.

In *Bridport Old Brewery Co.*, 2 Ch. 191, an extraordinary resolution was held invalid on the ground of the absence of a proper notice showing the purpose for which the meeting was convened at which the resolution was passed.

A resolution good in itself is not invalidated by being mixed up with other resolutions which, though irregularly passed, are *intra vires*: nor (*semble*) by being mixed up with resolutions which are *ultra vires*. *Ex parte Fox*, 6 Ch. 176.

Contributories are bound by a resolution to wind up voluntarily, and an order for winding up by the court will not in such a case, be made on the petition of contributories. *Bank of Gibraltar & Malta*, 1 Ch. 69.

It will be observed that these enactments do not interfere with any provisions relating to the dissolution of a company contained in the articles of association; such cases are met by sub-section 1.

Commencement of voluntary winding up

CXXX. A voluntary winding up shall be deemed to commence at the time of the passing of the resolution authorising such winding up.

In the case of a winding-up in pursuance of a special resolution the commencement dates from the passing of the confirmatory resolution. *Dawe's case*, 6 Eq. 232; *Weston's case*, 4 Ch. 20; *Hornby's case*, 16 W. R. 1164; *ex parte Colborne & Strawbridge*, 11 Eq. 478.

Effect of voluntary winding up on status of company.

CXXXI. Whenever a company is wound up voluntarily the company shall, from the date of the commencement of such winding up, cease to carry on its business, except in so far as may be required for the beneficial winding up thereof, and all transfers of shares except transfers made to or with the sanction of the liquidators, or alteration in the status of the members of the company taking place after the commencement of such winding up shall be void, but its corporate state and all its corporate powers shall, notwithstanding it is otherwise provided by its regulations, continue until the affairs of the company are wound up.

Liquidators have not power to cancel a forfeiture of shares validly made before the commencement of the winding up. *Dawe's case*, 6 Eq. 232.

Where a stockbroker sold shares for the defendant after the commencement of the winding up, it was held that the defendant could not refuse to execute a transfer though it might be nugatory; *Biederman* v. *Stone*, L. R., 2 C. P. 504.

Notice of resolution to wind up voluntarily.

CXXXII. Notice of any special resolution or extraordinary resolution passed for winding up a company voluntarily shall be given by advertisement as respects companies registered in England in the *London Gazette*, as respects companies registered in Scotland in the *Edinburgh Gazette*, and as respects companies registered in Ireland in the *Dublin Gazette*.

Consequences of voluntary winding up.

CXXXIII. The following consequences shall ensue upon the voluntary winding up of a company:

(1.) The property of the company shall be applied in satisfaction of its liabilities *pari passu*, and,

subject thereto, shall, unless it be otherwise provided by the regulations of the company, be distributed amongst the members according to their rights and interests in the company:

That is, of the liabilities as they exist at the commencement of the winding up. *Ex parte Ashbury*, 5 Eq. 223.

"Property" means the same thing as "assets" of the company, and includes unpaid capital. *Webb* v. *Whiffin*, L. R. 5 H. L. 711.

(2.) Liquidators shall be appointed for the purpose of winding up the affairs of the company and distributing the property:

As to notice of intention to appoint liquidators, *Anglo-Californian Mining Co.* v. *Lewis*, 6 H. & N. 174; 30 L. J., Exch. 50; *Oakes* v. *Turquand*, L. R., 2 H. L. at p. 355.

(3.) The company in general meeting shall appoint such persons or person as it thinks fit to be liquidators or a liquidator, and may fix the remuneration to be paid to them or him:

(4.) If one person only is appointed, all the provisions herein contained in reference to several liquidators shall apply to him:

(5.) Upon the appointment of liquidators all the power of the directors shall cease, except in so far as the company in general meeting or the liquidators may sanction the continuance of such powers:

(6.) When several liquidators are appointed, every

power hereby given may be exercised by such one or more of them, as may be determined at the time of their appointment, or in default of such determination by any number not less than two:

Liquidators cannot give a general authority to one of their number to accept bills. *Ex parte Birmingham Banking Co.*, 3 Ch. 651: *ex parte Agra & Masterman's Bank*, 6 Ch. 206, and in the last case it was doubted whether they can authorise one of their number to accept a specific bill.

(7.) The liquidators may, without the consent of the Court, exercise all powers by this Act given to the official liquidator:

(8.) The liquidators may exercise the powers hereinbefore given to the Court of settling the list of contributories of the company, and any list so settled shall be *primâ facie* evidence of the liability of the persons named therein to be contributories:

The liquidators have power to rectify the register without coming to the court in a voluntary winding up, *Brighton Arcade Co.* v. *Dowling*, L. R., 3 C. P. 175: whether they have in a winding up under supervision, *quære*; *Gilbert's case*, 5 Ch. 559.

(9.) The liquidators may at any time after the passing of the resolution for winding up the company, and before they have ascertained the sufficiency of the assets of the company, call on all or any of the contributories for the time

being settled on the list of contributories to the extent of their liability, to pay all or any sums they deem necessary to satisfy the debts and liabilities of the company, and the costs charges and expenses of winding it up, and for the adjustment of the rights of the contributories amongst themselves, and the liquidators may in making a call take into consideration the probability that some of the contributories upon whom the same is made may partly or wholly fail to pay their respective portions of the same :

A holder of fully paid up shares is a contributory within the meaning of the Act, and accordingly a call may be made in pursuance of this power for the purpose of adjusting the rights of the partly paid up and the fully paid up shareholders, *Anglesea Colliery Co.*, 1 Ch. 555.

Action for payment of call, *Hull Flax Co.* v. *Wellesley*, 6 H. & N. 33.

(10.) The liquidators shall pay the debts of the company, and adjust the rights of the contributories amongst themselves.

Effect of winding up on share capital of company limited by guarantee.

CXXXIV. Where a company limited by guarantee, and having a capital divided into shares, is being wound up voluntarily, any share capital that may not have been called up shall be deemed to be assets of the company, and to be a specialty debt due from each member to the company to the extent of any sums that may be unpaid on any shares held by him, and

payable at such time as may be appointed by the liquidators.

See note to section 90.

Power of company to delegate authority to appoint liquidators.

CXXXV. A company about to be wound up voluntarily, or in the course of being wound up voluntarily, may by an extraordinary resolution delegate to its creditors or to any committee of its creditors, the power of appointing liquidators or any of them, and supplying any vacancies in the appointment of liquidators, or may by a like resolution enter into any arrangement with respect to the powers to be exercised by the liquidators, and the manner in which they are to be exercised; and any Act done by the creditors, in pursuance of such delegated power, shall have the same effect as if it had been done by the company.

This section is intended to facilitate arrangements between a company and its creditors, and to save the expense of a winding up by the court. It frequently happens that the creditors would gladly allow a company to wind up voluntarily if they were certain of being invested with sufficient control over the administration of the winding up. This section gives full power to a company to agree with its creditors as to the extent to which they are entitled to interfere in the winding up.

Arrangement when binding on creditors.

CXXXVI. Any arrangement entered into between a company about to be wound up voluntarily, or in the course of being wound up voluntarily, and its

creditors, shall be binding on the company if sanctioned by an extraordinary resolution, and on the creditors if acceded to by three-fourths in number and value of the creditors, subject to such right of appeal as is hereinafter mentioned.

It not unfrequently happens, that a large majority of the company on the one side and of the creditors on the other are perfectly willing to enter into an amicable arrangement, and save the expense of a recourse to the court; such an arrangement, however, is rendered impossible by one or two creditors or one or two contributories determining to force the company into court. This section prevents such an interference of a minority, by enacting that an arrangement between a company and its creditors if sanctioned by an extraordinary resolution (see sect. 129) of the company, and by three-fourths in number and value of the creditors, shall be binding on both parties. The next section prevents the majority from exercising its powers to the real prejudice of the minority, by giving a right of appeal to the court, with power to amend vary or confirm the arrangement.

See *Scinde, &c., Bank Corporation*, 15 L. T. (N.S.) 602.

Power of creditor or contributory to appeal.

CXXXVII. Any creditor or contributory of a company that has in manner aforesaid entered into any arrangement with its creditors may, within three weeks from the date of the completion of such arrangement, appeal to the Court against such arrangement, and the Court may thereupon, as it thinks just, amend vary or confirm the same.

Application to be by petition or motion, or, if the judge so directs, by summons in chambers, part II. of this App., rule 51.

Power for liquidators or contributories in voluntary winding up to apply to court.

CXXXVIII. Where a company is being wound up voluntarily the liquidators or any contributory of the company may apply to the Court in England Ireland or Scotland, or to the Lord Ordinary on the Bills in Scotland in time of vacation, to determine any question arising in the matter of such winding up, or to exercise, as respects the enforcing of calls, or in respect of any other matter, all or any of the powers which the Court might exercise if the company were being wound up by the Court; and the Court or Lord Ordinary in the case aforesaid, if satisfied that the determination of such question, or the required exercise of power, will be just and beneficial may accede wholly or partially to such application, on such terms and subject to such conditions as the Court thinks fit, or it may make such other order interlocutor or decree on such application as the Court thinks just.

For mode of application to Court, see note to s. 137.

A favourite argument advanced by the supporters of a winding up by the Court, or, in other words, of a long chancery suit, as against a voluntary winding up, has been the inability of the voluntary liquidators to enforce calls and do other acts necessary to the efficient winding up of a company. This section removes all ground for such an argument, as it enables the liquidators to call upon the Court for aid, when it is required, in any particular transaction, without transferring to the Court the whole conduct of the winding up.

Under this section the Court restrained a creditor from suing a company, which was in course of winding up voluntarily, the creditor to have access to the proceedings in the winding up, and liberty to apply; *Keynsham Company*, 33 Beav. 123, see also *Life Association of England*, 10 Jur.

(N. S.) 762; and *Poole Firebrick Clay Co.*, 17 Eq. 268. Execution restrained; *Sabloniere Hotel Co.*, 3 Eq. 74.

Powers of s. 165 exercised; *Ranee's case*, 6 Ch. 104; and see *Bank of Gibraltar & Malta*, 1 Ch. 69.

Where the liquidator has compromised a claim, and some of the shareholders are dissatisfied, it is for them and not for him to bring the matter before the Court; *Licensed Victualler's, &c., Co.*, 15 W. R. 917.

Power of liquidators to call general meeting

CXXXIX. Where a company is being wound up voluntarily the liquidators may, from time to time, during the continuance of such winding up, summon general meetings of the company for the purpose of obtaining the sanction of the company by special resolution or extraordinary resolution, or for any other purposes they think fit; and in the event of the winding up continuing for more than one year, the liquidators shall summon a general meeting of the company at the end of the first year, and of each succeeding year from the commencement of the winding up, or as soon thereafter as may be convenient, and shall lay before such meeting an account showing their acts and dealings, and the manner in which the winding up has been conducted during the preceding year.

Power to fill up vacancy in liquidators.

CXL. If any vacancy occurs in the office of liquidators appointed by the company, by death resignation or otherwise, the company in general meeting may, subject to any arrangement they may have entered into with their creditors, fill up such vacancy, and a general meeting for the purpose of filling up such vacancy may be convened by the continuing liquidators, if any, or by any contributory of the company, and shall be deemed to have been duly held if held in manner pre-

scribed by the regulations of the company, or in such other manner as may, on application by the continuing liquidator if any or by any contributory of the company, be determined by the Court.

Power of court to appoint liquidators

CXLI. If from any cause whatever there is no liquidator acting in the case of a voluntary winding up, the Court may, on the application of a contributory, appoint a liquidator or liquidators: the Court may also, on due cause shown, remove any liquidator, and appoint another liquidator to act in the matter of a voluntary winding up.

Jurisdiction under this section; *Marseilles, &c., Extension Co.*, 4 Eq 692; *Brit. Nation Association*, 14 Eq. 492; see also *ex parte Pulbrook*, 2 De G. J. & S. 348.

Mode of application to Court, note to s. 137.

Liquidators on conclusion of winding up to make up an account.

CXLII. As soon as the affairs of the company are fully wound up, the liquidators shall make up an account showing the manner in which such winding up has been conducted, and the property of the company disposed of; and thereupon they shall call a general meeting of the company for the purpose of having the accounts laid before them and hearing any explanation that may be given by the liquidators: the meeting shall be called by advertisement, specifying the time place and object of such meeting; and such advertisement shall be published one month at least previously to the meeting, as respects companies registered in England in the *London Gazette*, and as respects companies registered in Scotland in the *Edinburgh*

Gazette, and as respects companies registered in Ireland in the *Dublin Gazette*.

Liquidators to report meeting to registrar.

CXLIII. The liquidators shall make a return to the registrar of such meeting having been held, and of the date at which the same was held, and on the expiration of three months from the date of the registration of such return the company shall be deemed to be dissolved: if the liquidators make default in making such return to the registrar they shall incur a penalty not exceeding five pounds for every day during which such default continues.

As to jurisdiction of Court to make order after registration of return; *Crookhaven Mining Co.*, 3 Eq. 69.

Costs of voluntary liquidation.

CXLIV. All costs charges and expenses properly incurred in the voluntary winding up of a company, including the remuneration of the liquidators, shall be payable out of the assets of the company in priority to all other claims.

The liquidators are not personally liable for costs of winding up; *In re Trueman's estate, Hooke* v. *Piper*, 14 Eq. 278. See s. 110 and note.

Saving of rights of creditors.

CXLV. The voluntary winding up of a company shall not be a bar to the right of any creditor of such company to have the same wound up by the Court, if the Court is of opinion that the rights of such creditor will be prejudiced by a voluntary winding up.

It will be observed that the operation of this section is restricted to cases where the Court is of opinion that the

rights of creditors will be prejudiced by a voluntary winding up. Under no other circumstances is the Court justified in taking the winding up into its own hands. See notes to sections 138, 147, and 149. *Universal Drug Supply Association*, 22 W. R. 675.

The Court has jurisdiction to make such an order on the petition of a contributory after the commencement of a voluntary winding up; *Littlehampton, &c. Steamship Co.*, 34 Beav. 256; 2 D. J. & S. 521; *London Flour Co.*, 16 W. R. 474, 552.

Power of court to adopt proceedings of voluntary winding up.

CXLVI. Where a company is in course of being wound up voluntarily, and proceedings are taken for the purpose of having the same wound up by the Court, the Court may, if it thinks fit, notwithstanding that it makes an order directing the company to be wound up by the Court, provide in such order or in any other order for the adoption of all or any of the proceedings taken in the course of the voluntary winding up.

The Court will adjudicate on a claim raised by a bill against a limited company in course of being wound up voluntarily; *Lowndes* v. *Garnett, &c. Mining Co.*, 8 Jur. (N.S.) 694, 31 L. J. (Ch.), 451, 2 Johns. & H. 282.

A judgment creditor may oppose the adoption of the proceedings under the voluntary winding up; *Cumberland Black Lead Mining Co.*, 6 L. T. (N. S.) 197.

As to effect of delay in petitioning against voluntary winding up; *Anglo Californian Gold Mining Co.*, 10 W. R. 309.

Winding up subject to the Supervision of the Court.

Power of court on

CXLVII. When a resolution has been passed by a

company to wind up voluntarily, the Court may make an order directing that the voluntary winding up should continue, but subject to such supervision of the Court, and with such liberty for creditors contributories or others to apply to the Court, and generally upon such terms and subject to such conditions as the Court thinks just.

application, to direct winding up subject to supervision

This section leaves it entirely in the discretion of the Court, whether it will or will not make an order for winding up a company by the Court, or subject to the supervision of the Court. No such order will, under ordinary circumstances, be made on the petition of contributories, who, in the absence of fraud, or of an inequitable overbearing of the rights of a dissentient minority by improper influence, are bound by the resolution to wind up voluntarily. In any event, before making such an order the Court will consider whether the case be such as to require the order to be made with a view of putting in force some of the provisions of the Act, which would be available if the order were made, but are not available under a mere voluntary winding up. The fact that charges of misconduct are made against the directors, does not constitute such a case, as they can be reached, if not under the 165th, at all events under the 138th section of the Act.

Bank of Gibraltar and Malta, 1 Ch. 69, *London and Merc. Discount Co.*, 1 Eq. 277; *Imperial Bank of China and Japan*, 1 Ch. 339; *St David's Gold Mining Co.*, 14 W. R 755; *Imperial Merc Credit Association*, W N. 1866, 257, *Oriental Commercial Bank*, 15 W. R 7, 15 L T. 8; *Beaujolais Wine Co.*, 3 Ch. 15; *ex parte Fox*, 6 Ch. 176.

On the other hand, an order for winding up the company compulsorily was made in *Barned's Banking Co*, 14 W R 722, it being a case where the assets ought to be realised immediately, and where the circumstances required

that a full investigation should be made of the affairs of the bank; and in *W. Surrey Tanning Co.*, 2 Eq. 737, on the ground of the preponderating influence of a single shareholder. So where a suspicious bill of sale to one of the directors was shown to have been registered; *ex parte Adams*, W. N. 1867, 172; and where the liquidator had delayed arranging with the creditors. See *Manchester Queensland Cotton Co.*, 15 W. R. 1070.

As a rule, however, where a voluntary winding up has commenced, the Court will continue it under supervision in preference to making a compulsory order; *Inns of Court Hotel Co.*, W. N. 1866, 348; *United Merthyr Collieries Co.*, W. N. 1867, 99; *Lond. & Mediterr. Bank*, 15 W. R. 33.

The commencement of the winding up dates from the passing of the resolution for the voluntary winding up, *Weston's Case*, 4 Ch. 20; see note to s. 130.

Petition for winding up subject to supervision.

CXLVIII. A petition praying wholly or in part that a voluntary winding up should continue, but subject to the supervision of the Court, and which winding up is hereinafter referred to as a winding up subject to the supervision of the Court, shall, for the purpose of giving jurisdiction to the Court over suits and actions, be deemed to be a petition for winding up the company by the Court.

Ss. 85, 87.

As to service, see part II. of this App., rule 3, and *Inventors' Association*, 13 W. R. 1015.

Court may have regard to wishes of creditors.

CXLIX. The Court may, in determining whether a company is to be wound up altogether by the Court or subject to the supervision of the Court, in the appointment of liquidator or liquidators, and in all other

matters relating to the winding up subject to supervision, have regard to the wishes of the creditors or contributories, as proved to it by any sufficient evidence, and may direct meetings of the creditors or contributories to be summoned held and regulated in such manner as the Court directs, for the purpose of ascertaining their wishes, and may appoint a person to act as chairman of any such meeting, and to report the result of such meeting to the Court: in the case of creditors, regard shall be had to the value of the debts due to each creditor, and in the case of contributories to the number of votes conferred on each contributory by the regulations of the company.

See note to s. 147, and for the leaning of the Court to a winding up under supervision, where the majority of the creditors are in favour of it, rather than to a compulsory winding up, see further *Oriental Comm. Bk.*, 15 W. R. 7; 15 L. T. 8; and *Lond. Flour Co.*, 16 W. R. 474, 552. The section is especially applicable in the case of applications by shareholders under the circumstances mentioned in the first four clauses of s. 79. (Per Selwyn, L.J., in the last case.)

Power to court to appoint additional liquidators in winding up subject to supervision.

CL. Where any order is made by the Court for a winding up subject to the supervision of the Court, the Court may, in such order or in any subsequent order, appoint any additional liquidator or liquidators; and any liquidators so appointed by the Court shall have the same powers, be subject to the same obligations, and in all respects stand in the same position as if they had been appointed by the company: the Court may from time to time remove any liquidators so

appointed by the Court, and fill up any vacancy occasioned by such removal, or by death or resignation.

Effect of order of court for winding up, subject to supervision.

CLI. Where an order is made for a winding up subject to the supervision of the Court, the liquidators appointed to conduct such winding up may, subject to any restrictions imposed by the Court, exercise all their powers without the sanction or intervention of the Court in the same manner as if the company were being wound up altogether voluntarily; but, save as aforesaid, any order made by the Court for a winding up subject to the supervision of the Court, shall for all purposes, including the staying of actions suits and other proceedings, be deemed to be an order of the Court for winding up the company by the Court, and shall confer full authority on the Court to make calls, or to enforce calls made by the liquidators, and to exercise all other powers which it might have exercised if an order had been made for winding up the company altogether by the Court, and in the construction of the provisions whereby the Court is empowered to direct any act or thing to be done to or in favour of the official liquidators, the expression "official liquidators" shall be deemed to mean the liquidators conducting the winding up subject to the supervision of the Court.

See *Wright's case*, 5 Ch. 437, and order made in *London Quays Co.*, 3 Ch. 394.

Whether the liquidator has power to rectify the register without applying to the Court, *quære*, *Gilbert's case*, 5 Ch. 559.

Appointment in

CLII. Where an order has been made for the wind-

ing up of a company subject to the supervision of the Court, and such order is afterwards superseded by an order directing the company to be wound up compulsorily, the Court may in such last-mentioned order, or in any subsequent order, appoint the voluntary liquidators or any of them, either provisionally or permanently, and either with or without the addition of any other persons, to be official liquidators.

Certain cases of voluntary liquidators to office of official liquidators.

A compulsory order usually continues the voluntary liquidator as official liquidator. The misconduct of a voluntary liquidator is not ground for a compulsory order, the proper course being to apply in chambers to remove him; *Lond. & Medit. Bank*, 15 W. R. 33. Security not required from substituted liquidator appointed by Court; *ex parte Paul*, 19 W. R. 268.

Supplemental Provisions.

CLIII. Where any company is being wound up by the Court, or subject to the supervision of the Court, all dispositions of the property effects and things in action of the company, and every transfer of shares, or alteration in the status of the members of the company made between the commencement of the winding up and the order for winding up, shall, unless the Court otherwise orders, be void.

Dispositions after the commencement of the winding up avoided.

Barge's case, 5 Eq. 420. The Court has jurisdiction under this section to make valid dispositions of property and dealings with shares completed before the winding-up order; but where, at the date of the order, a contract is executory and incomplete, the Court has not discretionary powers to order it to be performed; *ex parte Pearson*, 3 Ch. 443;

Emmerson's case, 1 Ch. 433; and see *ex parte Contract Corporation*, 3 Ch. 105; *Bolognesi's case*, 5 Ch. 567; *Gibbs and West's case*, 10 Eq. 312.

Where a creditor presented a winding-up petition, was paid part of his debt, and subsequently proceeded with his petition, and an order was made, the creditor was compelled to refund the sum paid to him; *ex parte Greenwood*, 9 Ch. 511.

The section does not abrogate the rules of the Stock Exchange with respect to the relations between a broker and his employers; *Chapman* v. *Shepherd*, L. R., 2 C. P. 228; *Rudge* v. *Bowman*, L. R., 3 Q. B. 689.

See sections 84, 98.

The books of the company to be evidence.

CLIV. Where any company is being wound up, all books accounts and documents of the company and of the liquidators shall, as between the contributories of the company, be *primâ facie* evidence of the truth of all matters purporting to be therein recorded.

As to disposal of books, accounts, and documents of the company.

CLV. Where any company has been wound up under this Act and is about to be dissolved, the books accounts and documents of the company and of the liquidators may be disposed of in the following way; that is to say, where the company has been wound up by or subject to the supervision of the Court in such way as the Court directs, and where the company has been wound up voluntarily, in such way as the company by an extraordinary resolution directs; but after the lapse of five years from the date of such dissolution, no responsibility shall rest on the company, or the liquidators, or any one to whom the custody of such books accounts and documents has been committed, by reason that the same or any of them, can-

not be made forthcoming to any party or parties claiming to be interested therein.

Inspection of books

CLVI. Where an order has been made for winding up a company by the Court, or subject to the supervision of the Court, the Court may make such order for the inspection by the creditors and contributories of the company of its books and papers as the Court thinks just, and any books and papers in the possession of the company may be inspected by creditors or contributories, in conformity with the order of the Court, but not further or otherwise.

Ex parte Buchanan, 15 W. R. 99; *Joint Stock Discount Co.*, ib. 499, *Yorkshire Fibre Co.*, 9 Eq. 650.

As to discovery from official liquidator, *Gooch's case*, 7 Ch. 207.

Power of assignee to sue.

CLVII. Any person to whom anything in action belonging to the company is assigned in pursuance of this Act, may bring or defend any action or suit relating to such thing in action in his own name.

Debts of all descriptions to be proved.

CLVIII. In the event of any company being wound up under this Act, all debts payable on a contingency, and all claims against the company present or future certain or contingent ascertained or sounding only in damages, shall be admissible to proof against the company, a just estimate being made, so far as is possible, of the value of all such debts or claims as may be subject to any contingency or sound only in damages, or for some other reason do not bear a certain value.

A secured creditor is entitled to prove for the whole amount due to him at the time of sending in his claim,

according to the practice of the Court of Chancery, and not merely as in bankruptcy for the balance due after realising or valuing his security; and he may prove for such amount without regard to any security which may have been realised by him between the sending in his claim and its being adjudicated on; *Kellock's case*, 3 Ch. 769. What amounts to sending in a claim; *Forwood's claim*, 5 Ch. 18. See further, *ex parte Maxoudoff*, 6 Eq 582; *Blakeley Ordnance Co*, 8 Eq. 244; *Coupland's claim*, 5 Ch. 167; *Oxford & Canterbury Hall, Co.*, ib. 432; *Leech's claim*, 6 Ch. 388; also *ex parte Joint Stock Discount Co*, 19 Eq. 1, 23 W. R. 281.

Double proof against the same estate in respect of the same debt is not allowed in chancery any more than in bankruptcy; *Oriental Comm. Bank*, 7 Ch. 99.

Where a company is insolvent, creditors whose debts carry interest are entitled to dividends only on what is due for principal and interest at the commencement of the winding up. It is only where there is a surplus that they can claim subsequent interest, and then the dividends will be applied first in payment of interest, and, secondly, in reduction of principal; *Humber Iron Works Co.*; *Warrant Finance Co.'s case* (no. 1), 4 Ch. 643; *ex parte Colborne & Strawbridge*, 11 Eq. at p. 497. But this rule does not prevent a creditor having a right of proof against the estates of two companies from receiving dividends from both until his debt and interest are fully satisfied; *Joint Stock Discount Co.*; *Warrant Finance Co.'s case*, 5 Ch. 86. Nor does it prevent a secured creditor receiving dividends to the full amount of his principal, and at the same time realising his security until both principal and interest are satisfied; *Humber Ironworks Co.*; *Warrant Finance Co.'s case* (no. 2), ib. 88.

A possible claim in respect of future rent arising under a lease assigned to a purchaser, will be allowed; *Haytor Granite Co.*, 1 Ch. 77; see also *Horsey's claim*, 5 Eq. 561; *Gartness Iron Co.*, 10 Eq. 412, and *Telegraph Construction Co.*, ib. 384: in which case the company was not being wound

up, but was reducing its capital. But a dividend will not be set apart in a winding up to answer any such future or contingent claim; *Horsey's claim*, ubi supra; *secus*, in the case of a reduction of capital; *Telegraph Construction Co.*, ubi supra.

As to proof by trustee for a company to indemnify himself for liabilities incurred by him as such trustee: *Nat. Finance Co.*; *ex parte Or. Comm. Bk.*, 3 Ch. 791; *Hunt's claim*, W. N. 1872, 53; and particularly the judgment of Wickens, V.-C., in *Hughes's claim*, 13 Eq. 623.

As to compensation to officer of company for loss of salary; *Yelland's case*, 4 Eq. 350; *ex parte Clark*, 7 Eq. 550; *ex parte Logan*, 9 Eq. 149; also *ex parte Maclure*, 5 Ch. 737.

As to continuing damages, *Trent & Humber Co.*, 4 Ch. 112.

A contributory who has bought up a debt for less than is actually due thereon, may prove for the whole amount, and not merely for what he has paid: *Humber Iron Works Co.*, 8 Eq. 122.

The contested point as to the proper mode of valuing life policies (*Bell's case*, 9 Eq. 706, *Lancaster's case*, *Albert Arbitration*, 16 Sol. J. 103, *Holdich's case*, 14 Eq. 73) is now settled by statute, in accordance with the decision of Lord Cairns in the Albert Arbitration. See 35 & 36 Vict. c. 41, sched. I.

See Part II. of this App. Rule 25.

General scheme of liquidation may be sanctioned.

CLIX. The liquidators may, with the sanction of the Court, where the company is being wound up by the Court or subject to the supervision of the Court, and with the sanction of an extraordinary resolution of the company, where the company is being wound up altogether voluntarily, pay any classes of creditors in full, or make such compromise or other arrangement as the liquidators may deem expedient with creditors or persons claiming to be creditors, or persons having or alleging themselves to have any claim, present or

future certain or contingent ascertained or sounding only in damages against the company, or whereby the company may be rendered liable.

See p. 192.

Risca Ore and Iron Co., 30 Beav. 128.

In the case of a voluntary winding up, the Court, if applied to, must be satisfied that the compromise is a fair one, although it has been sanctioned by a general meeting; *Lama Coal Co.*, 2 Ch. 692; see also note to s. 138.

Power to compromise.

CLX. The liquidators may, with the sanction of the Court, where the company is being wound up by the Court or subject to the supervision of the Court, and with the sanction of an extraordinary resolution of the company, where the company is being wound up altogether voluntarily, compromise all calls and liabilities to calls debts and liabilities capable of resulting in debts and all claims whether present or future certain or contingent ascertained or sounding only in damages subsisting or supposed to subsist between the company and any contributory or alleged contributory, or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets of the company or the winding up of the company upon the receipt of such sums payable at such times and generally upon such terms as may be agreed upon, with power for the liquidators to take any security for the discharge of such debts or liabilities, and to give complete discharges in respect of all or any such calls debts or liabilities.

See p. 193.

General scheme of compromise sanctioned by Court;

Commercial Bank of India, 8 Eq. 241. The Court has no jurisdiction to compel a liquidator to accept a compromise with a contributory; *Bearson's case*, 7 Ch. 309. The Court has jurisdiction to set aside a compromise made with its sanction, if obtained by misrepresentation; *Clarke's case*, 14 W. R. 856.

The discharge of an A. contributory, under a compromise which reserved the rights of the company against all other contributories, does not prevent his transferor being put on the B. list; *Nevill's case*, 6 Ch. 43; and the transferor may be put on, though the rights of the company be not so reserved, the case being one, not of principal and surety, but of statutory liability; *Hudson's case*, 12 Eq. 1. The transferee, however, remains liable under his implied contract to indemnify his transferor; *Roberts* v. *Crowe*, L. R. 7 C. P. 629.

In connection with this section, and s. 159, must be read the Joint-Stock Companies Arrangement Act, 1870, which will be found in App. III. See *Albert Life Assur. Co.*, 6 Ch. 381.

Power for liquidators to accept shares, &c as a consideration for sale of property of company.

CLXI. Where any company is proposed to be or is in the course of being wound up altogether voluntarily, and the whole or a portion of its business or property is proposed to be transferred or sold to another company, the liquidators of the first-mentioned company may, with the sanction of a special resolution of the company by whom they were appointed, conferring either a general authority on the liquidators, or an authority in respect of any particular arrangement, receive in compensation or part compensation for such transfer or sale of shares policies or other like interests, in such other company, for the purpose of distribution amongst the members of the company being wound up, or may enter into any other arrangement

whereby the members of the company being wound up may, in lieu of receiving cash shares policies or other like interests or in addition thereto, participate in the profits of or receive any other benefit from the purchasing company; and any sale made or arrangement entered into by the liquidators in pursuance of this section shall be binding on the members of the company being wound up; subject to this proviso, that if any member of the company being wound up who has not voted in favour of the special resolution passed by the company of which he is a member at either of the meetings held for passing the same expresses his dissent from any such special resolution in writing addressed to the liquidators or one of them, and left at the registered office of the company not later than seven days after the date of the meeting at which such special resolution was passed, such dissentient member may require the liquidators to do one of the following things, as the liquidators may prefer; that is to say, either to abstain from carrying such resolution into effect, or to purchase the interest held by such dissentient member at a price to be determined in manner hereinafter mentioned, such purchase money to be paid before the company is dissolved, and to be raised by the liquidators in such manner as may be determined by special resolution: no special resolution shall be deemed invalid for the purposes of this section by reason that it is passed antecedently to or concurrently with any resolution for winding up the company, or for appointing liquidators; but if an order be made within a year for winding up the company by or subject

to the supervision of the Court, such resolution shall not be of any validity unless it is sanctioned by the Court.

The mode in which this section is made available for the amalgamation of companies is fully stated at p. 193. Forms for amalgamating companies will be found in App. II.

A shareholder in a company cannot be compelled, under this section, to take shares in the other company; nor does he, by failing to express his dissent in writing within seven days after the meeting, forfeit his right to refuse to become a shareholder, but he has three courses open to him. He may assent to the arrangement; or he may, if he does not assent to it, merely leave the matter as it was, and have nothing to do with the new company, and abandon his deposit; or he may, upon giving proper notice, require his shares to be paid for; *Bank of Hindustan, China, and Japan*, 13 W. R. 883; 34 L. J. N. S., Ch. 609; *Imp. Merc. Credit Association*, 12 Eq. 504; *ex parte Poole's executors*, 8 Ch. 702. But the Court will not give him leave to file a bill in the name of the company to set aside the arrangement, if *intra vires*, though irregular. See the observations of the L.J. in *ex parte Fox*, 6 Ch. 176; on *Imp. Bank of China, India, & Japan*, 1 Ch. 339.

As between the dissentient shareholders and the creditors the section does not contemplate any alteration of liability; *Vining's case*, 6 Ch. 96.

If the arrangement imposes a fresh and original liability on the shareholders in the company whose business is transferred, it is *ultra vires* and invalid; *Clinch* v. *Financial Corporation*, 4 Ch. 117; *Imp. Bank of China, &c.* v. *Bank of Hindostan, &c.*, 6 Eq. 91; and see *Bank of Hindostan* v. *Alison*, L. R., 6 C. P. 222.

An unregistered company, having no power in its deed of settlement to transfer its business, may effect that object by registering under the Act, and then availing itself of this section; *Southall* v. *Brit. Mutual Association*, 11 Eq. 65.

The section applies in the case of a winding up subject to supervision; *Imp. Merc. Credit Association*, 12 Eq. 504. Unsuccessful attempt to support under this section a sale of business to an individual; *Bird* v. *Bird's Sewage Co.*, 9 Ch. 358.

As to amalgamation of life assurance companies, see Life Assurance Companies Act, 1870, ss. 14, 15, in App. III.

Mode of determining price.

CLXII. The price to be paid for the purchase of the interest of any dissentient member may be determined by agreement, but if the parties dispute about the same, such dispute shall be settled by arbitration, and for the purposes of such arbitration the provisions of "The Companies Clauses Consolidation Act, 1845," with respect to the settlement of disputes by arbitration, shall be incorporated with this Act; and in the construction of such provisions this Act shall be deemed to be the special Act, and "the company" shall mean the company that is being wound up, and any appointment by the said incorporated provisions directed to be made under the hand of the secretary, or any two of the directors, may be made under the hand of the liquidator, if only one, or any two or more of the liquidators, if more than one.

Anglo-Ital. Bank v. *De Rosaz*, L. R. 2 Q. B. 452; *De Rosaz* v. *Anglo-Ital. Bank*, L. R. 4 Q. B. 462.

Certain attachments, sequestrations, and executions to be void.

CLXIII. Where any company is being wound up by the Court, or subject to the supervision of the Court, any attachment sequestration distress or execution put in force against the estate or effects of the company after the commencement of the winding up, shall be void to all intents.

This section is controlled by s. 87, and must be construed to apply only to attachments sequestrations distresses or executions put in force without the leave of the Court; *Exhall Mining Co.*, 4 D. J. & S. 377; 10 Jur (N. S.), 576; *London Cotton Co.*, 2 Eq. 53; *Bastow & Co.*, 4 Eq. 681.

Distress issued after winding up order not allowed; *Progress Assur. Co.*, 9 Eq. 370; see also, *London & Devon Biscuit Co.*, 12 Eq. 190.

But where a company continues in occupation of and leaves goods on the lands of their lessor, the lessor is not deprived by this section of his right to distrain for rent accrued since the winding up; *ex parte Heavan*, 6 Ch. 462. See the observations of the Master of the Rolls in *ex parte N. Staffordshire Rail. Co.*, 19 Eq. 60.

As to execution for costs under judgment obtained by defendant in an action brought by the liquidators of the company; *ex parte, J. M. Smith*, 3 Ch. 125; *ex parte, Levick*, 5 Eq. 69. As to lien on goods of company; *Northfield Iron Co.*, 14 L. J. (N. S.) 695; *Wiltshire Iron Co. v. G. W. Rail. Co.*, L. R., 6 Q.B. 101, 776.

Whether these sections apply to proceedings by the Crown, *quære; English Joint Stock Co.*, W. N. 1866, 199. Application where property is situated abroad; *Oriental Steam Co.*, 9 Ch. 557.

See s. 201, and note.

Fraudulent preference.

CLXIV. Any such conveyance mortgage delivery of goods payment execution or other act relating to property as would, if made or done by or against any individual trader, be deemed in the event of his bankruptcy to have been made or done by way of undue or fraudulent preference of the creditors of such trader, shall, if made or done by or against any company, be deemed, in the event of such company being wound up under this Act, to have been made or done by way of

undue or fraudulent preference of the creditors of such company, and shall be invalid accordingly; and for the purposes of this section the presentation of a petition for winding up a company shall in the case of a company being wound up by the Court or subject to the supervision of the Court, and a resolution for winding up the company shall in the case of a voluntary winding up, be deemed to correspond with the act of bankruptcy in the case of an individual trader; and any conveyance or assignment made by any company formed under this Act of all its estate and effects to trustees for the benefit of all its creditors shall be void to all intents.

As to circumstances which amount to fraudulent preference; *Inns of Court Hotel Co.*, 6 Eq. 82. Security given by insolvent company to director cognisant of the state of affairs set aside; *Gaslight Improvement Co.* v. *Terrell*, 10 Eq. 168.

Power of court to assess damages against delinquent directors and officers

CLXV. Where, in the course of the winding up of any company under this Act, it appears that any past or present director manager official or other liquidator or any officer of such company, has misapplied or retained in his own hands or become liable or accountable for any moneys of the company, or been guilty of any misfeasance or breach of trust in relation to the company, the Court may, on the application of any liquidator, or of any creditor or contributory of the company, notwithstanding that the offence is one for which the offender is criminally responsible, examine into the conduct of such director manager or other officer, and compel him to repay any moneys so misapplied or retained, or for which he has become liable

or accountable, together with interest after such rate as the Court thinks just, or to contribute such sums of money to the assets of the company by way of compensation in respect of such misapplication retainer misfeasance or breach of trust, as the Court thinks fit.

This section has been held not to apply as against the executors of a deceased director, and it may be doubted whether it will apply to the survivors of several directors; *Feltom's Executors' case*, 1 Eq. 219. Again, in *Bank of Gibraltar & Malta*, 1 Ch. 69, it was held that, if the evidence be insufficient to establish a case against directors, but sufficient to lay ground for an inquiry, the Court will not direct an inquiry, but will allow the plaintiff to file a bill in the name of the company against the directors; the petitioner undertaking to indemnify the company against costs, or in certain cases to submit to any order which the Court may make as to costs of the proceedings; *Imperial Bank of India, China, and Japan*, 1 Ch. 339.

In *Stringer's case*, however, the Lords Justices expressed a strong opinion in favour of a wide construction of the section; and the early disinclination of the Courts to give it full effect may be considered as no longer existing. Director ordered to repay a dividend declared and paid to him under a fraudulent and delusive balance sheet; *Stringer's case*, 4 Ch. 475 (disapproving of *Royal Hotel Co. of Gt. Yarmouth*, 4 Eq. 244); *Rance's case*, 6 Ch. 104. To refund secret promotion money; *Lond. & Prov. Starch Co.*, W. N. 1869, 98; *Hunt's case*, 37 L. J., Ch. 278; compare *Orgill's case*, 21 L. T. (N. S.) 221. To pay calls on shares which he had induced infants to take; *ex parte Wilson*, 8 Ch. 45.

A banker of a company is not an officer of the company within this section; *Imp. Land Co. of Marseilles*, 10 Eq. 298.

CLXVI. If any director officer or contributory of any company wound up under this Act destroys, muti- Penalty on falsification of books.

lates alters or falsifies any books papers writings or securities, or makes or is privy to the making of any false or fraudulent entry in any register book of account or other document belonging to the company, with intent to defraud or deceive any person, every person so offending shall be deemed to be guilty of a misdemeanour, and upon being convicted shall be liable to imprisonment for any term not exceeding two years, with or without hard labour.

Prosecution of delinquent directors, &c., in the case of winding up by court.

CLXVII. Where any order is made for winding up a company by the Court or subject to the supervision of the Court, if it appear in the course of such winding up that any past or present director manager officer or member of such company has been guilty of any offence in relation to the company for which he is criminally responsible, the Court may, on the application of any person interested in such winding up, or of its own motion, direct the official liquidators, or the liquidators (as the case may be), to institute and conduct a prosecution or prosecutions for such offence, and may order the costs and expenses to be paid out of the assets of the company.

Application to be by petition, part II. of this App., Rule 51.

Prosecution of delinquent directors, &c., in case of voluntary winding up.

CLXVIII. Where a company is being wound up altogether voluntarily, if it appears to the liquidators conducting such winding up that any past or present director manager officer or member of such company has been guilty of any offence in relation to the company for which he is criminally responsible, it shall be lawful for the liquidators, with the previous sanction

of the Court, to prosecute such offender, and all expenses properly incurred by them in such prosecution shall be payable out of the assets of the company in priority to all other liabilities.

Application to be by petition, part II. of this App., Rule 51.

Penalty of perjury.

CLXIX. If any person, upon any examination upon oath or affirmation authorized under this Act, or in any affidavit deposition or solemn affirmation in or about the winding up of any company under this Act, or otherwise in or about any matter arising under this Act, wilfully and corruptly gives false evidence, he shall, upon conviction, be liable to the penalties of wilful perjury.

Power of Courts to make Rules.

Power of Lord Chancellor of Great Britain to make rules.

CLXX. In England the Lord Chancellor of Great Britain, with the advice and consent of the Master of the Rolls, and any one of the Vice-Chancellors for the time being, or with the advice and consent of any two of the Vice-Chancellors, may, as often as circumstances require, make such rules concerning the mode of proceeding to be had for winding up a company in the Court of Chancery as may from time to time seem necessary, but until such rules are made the general practice of the Court of Chancery, including the practice hitherto in use in winding up companies, shall, so far as the same is applicable and not inconsistent with this Act, apply to all proceedings for winding up a company.

Power of Court of Session in

CLXXI. In Scotland the Court of Session may make such rules concerning the mode of winding up as may

Scotland to make rules.

be necessary by Act of Sederunt; but, until such rules are made, the general practice of the Court of Session in suits pending in such Court shall, so far as the same is applicable, and not inconsistent with this Act, apply to all proceedings for winding up a company, and official liquidators shall in all respects be considered as possessing the same powers as any trustee on a bankrupt estate.

Power to make rules in Stannaries Court.

CLXXII. The Vice-Warden of the Stannaries may, from time to time, with the consent provided for by section 23 of the Act of eighteenth of Victoria, chapter thirty-two, make rules for carrying into effect the powers conferred by this Act upon the Court of the Vice-Warden, but, subject to such rules, the general practice of the said Court, and of the registrar's office in the said Court, including the present practice of the said Court in winding up companies, may be applied to all proceedings under this Act; the said Vice-Warden may likewise, with the same consent, make from time to time rules for specifying the fees to be taken in his said Court in proceedings under this Act; and any rules so made shall be of the same force as if they had been enacted in the body of this Act; and the fees paid in respect of proceedings taken under this Act, including fees taken under "The Joint-Stock Companies Act, 1856," in the matter of winding up companies, shall be applied exclusively towards payment of such additional officers, or such increase of the salaries of existing officers, or pensions to retired officers, or such other needful expenses of the Court, as the Lord Warden of the Stannaries shall from time to

time, on the application of the Vice-Warden or otherwise, think fit to direct sanction or assign and meanwhile shall be kept as a separate fund apart from the ordinary fees of the Court arising from other business, to await such direction and order of the Lord Warden herein, and to accumulate by investment in government securities until the whole shall have been so appropriated.

Power of Lord Chancellor of Ireland to make rules.

CLXXIII. In Ireland the Lord Chancellor of Ireland may, as respects the winding up of companies of Ireland, with the advice and consent of the Master of the Rolls in Ireland, exercise the same power of making rules as is by this Act hereinbefore given to the Lord Chancellor of Great Britain; but until such rules are made, the general practice of the Court of Chancery in Ireland, including the practice hitherto in use in Ireland in winding up companies, shall, so far as the same is applicable and not inconsistent with this Act, apply to all proceedings for winding up a company.

The power of making rules given by these ss. 170—173 is extended to making rules under the Act of 1867, s. 20.

PART V.

REGISTRATION OFFICE.

For explanation of this part, see above, p. 195.

Constitution of registration office.

CLXXIV. The registration of companies under this Act shall be conducted as follows: (that is to say),

(1.) The Board of Trade may from time to time appoint such registrars assistant registrars clerks and servants as they may think necessary for the registration of companies under this Act, and remove them at pleasure:

(2.) The Board of Trade may make such regulations as they may think fit with respect to the duties to be performed by any such registrars assistant registrars clerks and servants as aforesaid:

(3.) The Board of Trade may from time to time determine the places at which offices for the registration of companies are to be established, so that there be at all times maintained in each of the three parts of the United Kingdom at least one such office, and that no company shall be registered except at an office within that part of the United Kingdom in which by the memorandum of association the registered office of the company is declared to be established; and the Board may require that the registrar's office of the Court of the Vice-Warden of the Stannaries shall be one of the offices for the registration of companies formed for working mines within the jurisdiction of the Court:

(4.) The Board of Trade may from time to time direct a seal or seals to be prepared for the authentication of any documents required for or connected with the registration of companies:

(5.) Every person may inspect the documents

kept by the Registrar of Joint Stock Companies; and there shall be paid for such inspection such fees as may be appointed by the Board of Trade, not exceeding one shilling for each inspection; and any person may require a certificate of the incorporation of any company, or a copy or extract of any other document or any other part of any other document, to be certified by the registrar; and there shall be paid for such certificate of incorporation certified copy or extract such fees as the Board of Trade may appoint, not exceeding five shillings for the certificate of incorporation, and not exceeding sixpence for each folio of such copy or extract, or in Scotland for each sheet of two hundred words:

(6.) The existing registrar assistant-registrars clerks and other officers and servants in the office for the registration of joint stock companies shall, during the pleasure of the Board of Trade, hold the offices and receive the salaries hitherto held and received by them, but they shall in the execution of their duties conform to any regulations that may be issued by the Board of Trade:

(7.) There shall be paid to any registrar assistant-registrar clerk or servant that may hereafter be employed in the registration of Joint-Stock Companies such salary as the Board of Trade may, with the sanction of the Commissioners of the Treasury, direct:

(8.) Whenever any act is herein directed to be done to or by the Registrar of Joint Stock Companies, such act shall, until the Board of Trade otherwise directs, be done in England to or by the existing Registrar of Joint Stock Companies, or in his absence to or by such person as the Board of Trade may for the time being authorize; in Scotland to or by the existing Registrar of Joint Stock Companies in Scotland; and in Ireland to or by the existing Assistant-Registrar of Joint Stock Companies for Ireland, or by such person as the Board of Trade may for the time being authorize in Scotland or Ireland in the absence of the Registrar; but in the event of the Board of Trade altering the constitution of the existing registry office, such act shall be done to or by such officer or officers and at such place or places with reference to the local situation of the registered offices of the companies to be registered as the Board of Trade may appoint.

PART VI.

For explanation of this part, see p. 197.

APPLICATION OF ACT TO COMPANIES REGISTERED UNDER THE JOINT STOCK COMPANIES ACTS.

Definition of Joint Stock Companies Acts.

CLXXV. The expression "Joint Stock Companies Acts" as used in this Act shall mean "The Joint Stock Companies Act 1856," "The Joint Stock Companies Acts 1856, 1857," "The Joint Stock Banking Companies Act 1857," and "The Act to enable Joint Stock Banking Companies to be formed on the Principle of Limited Liability," or any one or more of such Acts, as the case may require; but shall not include the Act passed in the eighth year of the reign of Her present Majesty, chapter one hundred and ten, and intituled "An Act for the Registration Incorporation and Regulation of Joint Stock Companies."

Application of Act to companies formed under Joint Stock Companies Acts.

CLXXVI. Subject as hereinafter mentioned, this Act, with the exception of Table A. in the first Schedule, shall apply to companies formed and registered under the said Joint Stock Companies Acts, or any of them, in the same manner in the case of a limited company as if such company had been formed and registered under this Act as a company limited by shares, and in the case of a company other than a

limited company as if such company had been formed and registered as an unlimited company under this Act, with this qualification, that wherever reference is made expressly or impliedly to the date of registration, such date shall be deemed to refer to the date at which such companies were respectively registered under the said Joint Stock Companies Acts, or any of them, and the power of altering regulations by special resolution given by this Act shall, in the case of any company formed and registered under the said Joint Stock Companies Acts, or any of them, extend to altering any provisions contained in the Table marked B. annexed to "The Joint Stock Companies Act, 1856," and shall also in the case of an unlimited company formed and registered as last aforesaid extend to altering any regulations relating to the amount of capital or its distribution into shares, notwithstanding such regulations are contained in the memorandum of association.

This section enacts that "subject as hereinafter mentioned," that is to say, with the qualification mentioned at the end of the section, the Act of 1862 (with the exception of Table A.), shall apply to companies *formed and registered* under the Joint Stock Companies Acts in the same manner in the case of a limited company, as if *that company had been formed and registered* under the Act of 1862 as a company limited by shares; and in the case of a company other than a limited company, as if such company *had been formed and registered* as an unlimited company under the Act of 1862. In other words, it substitutes the Act of 1862 for the Joint Stock Companies Acts in respect of all companies *formed and registered* under the last-mentioned Acts.

Notwithstanding this express declaration, doubts have been raised as to whether companies formed under the Act of 1856 are or are not *required* to re-register under this Act. *Torquay Bath Co.*, 32 Beav. 581, 9 Jur. N. S. 633, *Bowes* v. *Hope Insur. Society*, 11 Jur. N. S. 643; *London Indiarubber Co.*, 1 Ch. 329. As to the *power* of such companies to re-register for the purpose of changing the nature of their liability, see section 180 and note.

Application of Act to companies registered under Joint Stock Companies Acts

CLXXVII. This Act shall apply to companies registered but not formed under the said Joint Stock Companies Acts or any of them in the same manner as it is hereinafter declared to apply to companies registered but not formed under this Act, with this qualification, that wherever reference is made expressly or impliedly to the date of registration, such date shall be deemed to refer to the date at which such companies were respectively registered under the said Joint Stock Companies Acts or any of them.

Mode of transferring shares

CLXXVIII. Any company registered under the said Joint Stock Companies Acts, or any of them, may cause its shares to be transferred in manner hitherto in use, or in such other manner as the company may direct.

For explanation of this section, see p. 198.

PART VII.

For explanation of this part, see p. 198.

The forms for registering existing companies will be found in App. II.

COMPANIES AUTHORISED TO REGISTER UNDER THIS ACT.

Regulations as to registration of existing companies.

CLXXIX. The following regulations shall be observed with respect to the registration of companies under this part of this Act; (that is to say,)

(1.) No company having the liability of its members limited by Act of Parliament or letters patent, and not being a joint stock company as hereinafter defined, shall register under this Act in pursuance of this part thereof;

(2.) No company having the liability of its members limited by Act of Parliament or by letters patent shall register under this Act in pursuance of this part thereof as an unlimited company, or as a company limited by guarantee:

(3.) No company that is not a joint stock company as hereinafter defined, shall in pursuance of this part of this Act register under this Act as a company limited by shares:

(4.) No company shall register under this Act in pursuance of this part thereof unless an assent to its so registering is given by a majority of

such of its members as may be present, personally or by proxy, in cases where proxies are allowed by the regulations of the company, at some general meeting summoned for the purpose:

(5.) Where a company not having the liability of its members limited by Act of Parliament or letters patent is about to register as a limited company, the majority required to assent as aforesaid shall consist of not less than three-fourths of the members present, personally or by proxy, at such last-mentioned general meeting:

(6.) Where a company is about to register as a company limited by guarantee, the assent to its being so registered shall be accompanied by a resolution declaring that each member undertakes to contribute to the assets of the company, in the event of the same being wound up, during the time that he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before the time at which he ceased to be a member, and of the costs charges and expenses of winding up the company, and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required, not exceeding a specified amount:

In computing any majority under this section when a poll is demanded regard shall be had to the number of votes to which each member is entitled according to the regulations of the company of which he is a member.

Companies capable of being registered.

CLXXX. With the above exceptions, and subject to the foregoing regulations, every company existing at the time of the commencement of this Act, including any company registered under the said Joint Stock Companies Act, consisting of seven or more members, and any company hereafter formed in pursuance of any Act of Parliament other than this Act, or of letters patent, or being a company engaged in working mines within and subject to the jurisdiction of the Stannaries, or being otherwise duly constituted by law, and consisting of seven or more members, may at any time hereafter register itself under this Act as an unlimited company, or a company limited by shares, or a company limited by guarantee; and no such registration shall be invalid by reason that it has taken place with a view to the company being wound up.

Section 176 substitutes the Act of 1862 for the Joint Stock Companies Acts, 1856, 1857, in the case of all companies formed and registered under those Acts. Many companies, especially those formed under 8 Vict. c. 110, have registered under those Acts without changing the nature of their liability. The words "including any company registered under the said Joint Stock Companies Acts" are introduced for the purpose of enabling such companies to acquire limited liability by re-registering under the Companies Act, 1862.

Registration after the presentation of a winding-up petition is a nullity. *Herc. Insur. Co.*, 11 Eq. 321.

Definition of joint stock company.

CLXXXI. For the purposes of this part of this Act, so far as the same relates to the description of companies empowered to register as companies limited by shares,

a joint stock company shall be deemed to be a company having a permanent paid up or nominal capital of fixed amount, divided into shares also of fixed amount or held and transferable as stock, or divided and held partly in one way and partly in the other, and formed on the principle of having for its members the holders of shares in such capital, or the holders of such stock, and no other persons; and such company when registered with limited liability under this Act shall be deemed to be a company limited by shares.

Proviso as to banking company.

CLXXXII. No banking company claiming to issue notes in the United Kingdom shall be entitled to limited liability in respect of such issue, but shall continue subject to unlimited liability in respect thereof, and, if necessary, the assets shall be marshalled for the benefit of the general creditors, and the members shall be liable for the whole amount of the issue, in addition to the sum for which they would be liable as members of a limited company.

Requisitions for registration by companies.

CLXXXIII. Previously to the registration in pursuance of this part of this Act of any joint stock company there shall be delivered to the registrar the following documents: (that is to say,)

(1.) A list showing the names addresses and occupations of all persons who on a day named in such list, and not being more than six clear days before the day of registration, were members of such company, with the addition of the shares held by such persons respectively, distinguishing in cases where such shares are numbered each share by its number:

(2.) A copy of any Act of Parliament royal charter letters patent deed of settlement contract of copartnery cost book regulations, or other instrument constituting or regulating the company:

(3.) If any joint stock company is intended to be registered as a limited company, the above list and copy shall be accompanied by a statement specifying the following particulars: (that is to say,)

The nominal capital of the company and the number of shares into which it is divided:

The number of shares taken and the amount paid on each share:

The name of the company, with the addition of the word "limited" as the last word thereof:

With the addition, in the case of a company intended to be registered as a company limited by guarantee, of the resolution declaring the amount of the guarantee.

Requisitions for registration by existing company not being a joint stock company

CLXXXIV. Previously to the registration in pursuance of this part of this Act of any company not being a joint stock company, there shall be delivered to the registrar a list showing the names addresses and occupations of the directors or other managers (if any) of the company, also a copy of any Act of Parliament letters patent deed of settlement contract of copartnery cost book regulations or other instrument constituting or regulating the company, with the addition, in the case of a company intended to be registered as a company

limited by guarantee, of the resolution declaring the amount of guarantee.

Power for existing company to register amount of stock instead of shares.

CLXXXV. Where a joint stock company authorised to register under this Act has had the whole or any portion of its capital converted into stock, such company shall, as to the capital so converted, instead of delivering to the registrar a statement of shares, deliver to the registrar a statement of the amount of stock belonging to the company, and the names of the persons who were holders of such stock, on some day to be named in the statement, not more than six clear days before the day of registration.

Authentication of statements of existing companies.

CLXXXVI. The lists of members and directors and any other particulars relating to the company hereby required to be delivered to the registrar shall be verified by a declaration of the directors of the company delivering the same, or any two of them, or of any two other principal officers of the company, made in pursuance of the Act passed in the sixth year of the reign of his late Majesty King William the Fourth, chapter sixty-two.

Registrar may require evidence as to nature of company.

CLXXXVII. The registrar may require such evidence as he thinks necessary for the purpose of satisfying himself whether an existing company is or not a joint stock company as hereinbefore defined.

On registration of banking company with limited liability notice to be given to customers.

CLXXXVIII. Every banking company existing at the date of the passing of this Act which registers itself as a limited company shall, at least thirty days previous to obtaining a certificate of registration with limited liability, give notice that it is intended so to register the same to every person and partnership firm

who have a banking account with the company, and such notice shall be given either by delivering the same to such person or firm, or leaving the same or putting the same into the post addressed to him or them at such address as shall have been last communicated or otherwise become known as his or their address to or by the company; and in case the company omits to give any such notice as is hereinbefore required to be given, then as between the company and the person or persons only who are for the time being interested in the account in respect of which such notice ought to have been given, and so far as respects such account and all variations thereof down to the time at which such notice shall be given, but not further or otherwise, the certificate of registration with limited liability shall have no operation.

Exemption of certain companies from payment of fees

CLXXXIX. No fees shall be charged in respect of the registration in pursuance of this part of this Act of any company in cases where such company is not registered as a limited company, or where previously to its being registered as a limited company the liability of the shareholders was limited by some other Act of Parliament or by letters patent.

Power to company to change name

CXC. Any company authorised by this part of this Act to register with limited liability shall, for the purpose of obtaining registration with limited liability, change its name, by adding thereto the word "limited."

Certificate of registration of existing companies.

CXCI. Upon compliance with the requisitions in this part of this Act contained with respect to registration, and on payment of such fees, if any, as are pay-

able under the Tables marked B. and C. in the first Schedule hereto, the Registrar shall certify under his hand that the company so applying for registration is incorporated as a company under this Act, and, in the case of a limited company, that it is limited, and thereupon such company shall be incorporated, and shall have perpetual succession and a common seal, with power to hold lands; and any banking company in Scotland so incorporated shall be deemed and taken to be a bank incorporated constituted or established by or under Act of Parliament.

Certificate to be evidence of compliance with Act

CXCII. A certificate of incorporation given at any time to any company registered in pursuance of this part of this Act shall be conclusive evidence that all the requisitions herein contained in respect of registration under this Act have been complied with, and that the company is authorised to be registered under this Act as a limited or unlimited company, as the case may be, and the date of incorporation mentioned in such certificate shall be deemed to be the date at which the company is incorporated under this Act.

Transfer of property to company

CXCIII. All such property real and personal including all interests and rights in to and out of property real and personal and including obligations and things in action, as may belong to or be vested in the company at the date of its registration under this Act, shall on registration pass to and vest in the company as incorporated under this Act for all the estate and interest of the company therein.

Registration under this Act not

CXCIV. The registration in pursuance of this part of this Act of any company shall not affect or preju-

to affect obligations incurred previously to registration.

dice the liability of such company to have enforced against it, or its right to enforce, any debt or obligation incurred or any contract entered into by to with or on behalf of such company previously to such registration.

Where an industrial society, formed as an unlimited company under 15 & 16 Vict. c. 31, became registered under the Industrial and Provident Societies Act, 1862, as a limited company for the purpose of being wound up, it was held that a holder of shares fully paid up before such registration could not be made a contributory. *Fountain's case*, 34 L. J. (Ch.) 593. 11 Jur. (N. S.) 553. *Lanyon* v. *Smith*, 9 Jur. (N. S.) 1228, differs from this case in that the defendant never became a member of the registered company.

Continuation of existing actions and suits.

CXCV. All such actions suits and other legal proceedings as may at the time of the registration of any company registered in pursuance of this part of this Act have been commenced by or against such company, or the public officer or any member thereof, may be continued in the same manner as if such registration had not taken place; nevertheless, execution shall not issue against the effects of any individual member of such company upon any judgment decree or order obtained in any action suit or proceeding so commenced as aforesaid: but in the event of the property and effects of the company being insufficient to satisfy such judgment decree or order an order may be obtained for winding up the company.

Effect of registration under Act.

CXCVI. When a company is registered under this Act in pursuance of this part thereof, all provisions contained in any Act of Parliament deed of settle-

ment contract of copartnery cost book regulations letters patent or other instrument constituting or regulating the company, including, in the case of a company registered as a company limited by guarantee, the resolution declaring the amount of the guarantee, shall be deemed to be conditions and regulations of the company, in the same manner and with the same incidents as if they were contained in a registered memorandum of association and articles of association; and all the provisions of this Act shall apply to such company and the members contributories and creditors thereof in the same manner in all respects as if it had been formed under this Act, subject to the provisions following: (that is to say,)

(1.) That Table A. in the first schedule to this Act shall not, unless adopted by special resolution, apply to any company registered under this Act in pursuance of this part thereof:

(2.) That the provisions of this Act relating to the numbering of shares shall not apply to any joint stock company whose shares are not numbered:

(3.) That no company shall have power to alter any provision contained in any Act of Parliament relating to the company:

(4.) That no company shall have power, without the sanction of the Board of Trade, to alter any provision contained in any letters patent relating to the company:

(5.) That in the event of the company being wound up, every person shall be a contributory,

in respect of the debts and liabilities of the company contracted prior to registration, who is liable, at law or in equity, to pay or contribute to the payment of any debt or liability of the company contracted prior to registration, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members amongst themselves in respect of any such debt or liability; or to pay or contribute to the payment of the costs charges and expenses of winding up the company, so far as relates to such debts or liabilities as aforesaid; and every such contributory shall be liable to contribute to the assets of the company, in the course of the winding up, all sums due from him in respect of any such liability as aforesaid; and in the event of the death bankruptcy or insolvency of any such contributory as last aforesaid, or marriage of any such contributory being a female, the provisions hereinbefore contained with respect to the representatives heirs and devisees of deceased contributories, and with reference to the assignees of bankrupt or insolvent contributories, and to the husbands of married contributories, shall apply:

The contributories, in respect of debts contracted after registration, will of course be the same persons as if the company had been formed under the Act of 1862.

(6.) That nothing herein contained shall authorise any company to alter any such provisions con-

tained in any deed of settlement contract of copartnery cost book regulations letters patent or other instrument constituting or regulating the company, as would, if such company had originally been formed under this Act, have been contained in the memorandum of association, and are not authorised to be altered by this Act:

But nothing herein contained shall derogate from any power of altering its constitution or regulations which may be vested in any company registering under this Act in pursuance of this part thereof by virtue of any Act of Parliament, deed of settlement, contract of copartnery, letters patent, or other instrument constituting or regulating the company.

See *Droitwich Patent Salt Co.* v. *Curzon*, L. R., 3 Ex. 35.

Power of court to restrain further proceedings

CXCVII. The Court may, at any time after the presentation of a petition for winding up a company registered in pursuance of this part of this Act, and before making an order for winding up the company, upon the application by motion of any creditor of the company restrain further proceedings in any action, suit, or legal proceedings against any contributory of the company as well as against the company as hereinbefore provided, upon such terms as the Court thinks fit.

See s. 85 and note.

Order for winding up company.

CXCVIII. Where an order has been made for winding up a company registered in pursuance of this part

of the Act, in addition to the provisions hereinbefore contained, it is hereby further provided that no suit action or other legal proceeding shall be commenced or proceeded with against any contributory of the company in respect of any debt of the company, except with the leave of the Court, and subject to such terms as the Court may impose.

See s. 87 and note.

PART VIII.

APPLICATION OF ACT TO UNREGISTERED COMPANIES.

For general explanation of this part see p. 205 ; see also *Thomas* v. *Wells*, 33 L. J. N. S. 211.

This part is a substitution for the winding-up Acts of 1848—9, and railway companies incorporated by Act of Parliament are the only companies excepted from its operation by this section.

The exception was contained in the Acts of 1848—9, but the Abandonment of Railways Act, 1850 (13 & 14 Vict c. 83), repealed it, and enabled (s. 31) a railway company to be wound up under these Acts on the petition of a *shareholder*.

Then came this section of the Companies Act, 1862, again excepting railway companies from the provisions as to the winding up of unregistered companies.

The Railways Abandonment Act, 1867 (30 & 31 Vict c. 127), followed, reviving the winding up of railway companies under the Abandonment Act of 1850 (with the substitution of the Companies Act 1862, for the Acts of 1848—9), and in conformity with these statutory enact

ments it was decided in *North Kent Ry. Co.*, 8 Eq. 356, that the Court had no jurisdiction to entertain a winding-up petition presented by any person other than a shareholder.

In consequence, the Railways Abandonment Act, 1869 (32 & 33 Vict. c. 114), was passed, and by s. 4 a petition for winding up a railway company may now be presented under the Companies Acts 1862 and 1867, by the company or any person authorized under those Acts to present a winding-up petition, or by any person on whose application the Board of Trade may proceed in pursuance of s. 32 of the Railway Companies Act, 1867. Attention does not seem to have been drawn to this statute in the case of *Exmouth Docks Co.*, 17 Eq. 181.

It is to be borne in mind that a winding-up petition can only be presented where a warrant for the abandonment of the whole railway of the company has been granted by the Board of Trade (32 & 33 Vict. c. 114, s. 4).

A railway company can of course register under part VII. of the Act, and thus avail themselves of the provisions for voluntary winding up.

Winding up of unregistered companies.

CXCIX. Subject as hereinafter mentioned, any partnership association or company, except railway companies incorporated by Act of Parliament, consisting of more than seven members, and not registered under this Act, and hereinafter included under the term unregistered company, may be wound up under this Act, and all the provisions of this Act with respect to winding up shall apply to such company, with the following exceptions and additions:

(1.) An unregistered company shall, for the purpose of determining the court having jurisdiction in the matter of winding up, be deemed to

be registered in that part of the United Kingdom where its principal place of business is situate; or, if it has a principal place of business situate in more than one part of the United Kingdom, then in each part of the United Kingdom where it has a principal place of business; moreover, the principal place of business of an unregistered company, or (where it has a principal place of business situate in more than one part of the United Kingdom) such one of its principal places of business as is situate in that part of the United Kingdom in which proceedings are being instituted shall for all the purposes of the winding up of such company be deemed to be the registered office of the company:

(2.) No unregistered company shall be wound up under this Act voluntarily or subject to the supervision of the Court:

There is an exception to this. By s. 17 of the Industrial and Provident Societies Act, 1862, a society registered under that Act, can be wound up voluntarily under this Act, with the substitution of the County Court of the district in which the office of the company is situate for the Court of Chancery. But an industrial society not registered under that Act cannot be wound up as an unregistered company under this Act. *Rotherhithe, &c., Ind. Soc.*, 32 Beav. 57.

(3.) The circumstances under which an unregistered company may be wound up are as follows: (that is to say,)

(*a.*) Whenever the company is dissolved, or has ceased to carry on business, or is carrying on business only for the purpose of winding up its affairs:

Unregistered company which had been dissolved and transferred its business to another company before the passing of this Act, ordered to be wound up on the petition of a creditor. *Family Endowment Soc.*, 5 Ch. 118.

(*b.*) Whenever the company is unable to pay its debts:

(*c.*) Whenever the court is of opinion that it is just and equitable that the company should be wound up:

See *Professional, &c., Building Soc.*, 6 Ch. 856.

(4) An unregistered company shall, for the purposes of this Act, be deemed to be unable to pay its debts:

(*a.*) Whenever a creditor to whom the company is indebted, at law or in equity, by assignment or otherwise, in a sum exceeding fifty pounds then due, has served on the company, by leaving the same at the principal place of business of the company, or by delivering to the secretary or some director or principal officer of the company, or by otherwise serving the same in such manner as the Court may approve or direct, a demand under his hand requiring the company to pay the sum so due and the company has for the space of three

weeks succeeding the service of such demand neglected to pay such sum, or to secure or compound for the same to the satisfaction of the creditor:

Planet Build. Society, 14 Eq. 441.

(*b.*) Whenever any action suit or other proceeding has been instituted against any member of the company for any debt or demand due, or claimed to be due, from the company, or from him in his character of member of the company, and notice in writing of the institution of such action suit or other legal proceeding having been served upon the company by leaving the same at the principal place of business of the company, or by delivering it to the secretary or some director manager or principal officer of the company, or by otherwise serving the same in such manner as the court may approve or direct, the company has not within ten days after service of such notice paid secured or compounded for such debt or demand, or procured such action suit or other legal proceeding to be stayed, or indemnified the defendant to his reasonable satisfaction against such action suit or other legal proceeding, and against all costs damages and expenses to be incurred by him by reason of the same:

(*c.*) Whenever, in England or Ireland, execution or other process issued on a judgment decree or order obtained in any court in favour of any creditor in any proceeding at law or in equity instituted by such creditor against the company, or any member thereof as such, or against any person authorised to be sued as nominal defendant on behalf of the company, is returned unsatisfied:

(*d.*) Whenever in the case of an unregistered company engaged in working mines within and subject to the jurisdiction of the Stannaries, a customary decree or order absolute for the sale of the machinery materials and effects of such mine has been made in a creditor's suit in the court of the Vice-Warden:

(*e.*) Whenever, in Scotland, the inducie of a charge for payment on an extract decree, or an extract registered bond, or an extract registered protest, have expired without payment being made:

(*f.*) Whenever it is otherwise proved to the satisfaction of the Court that the company is unable to pay its debts.

A company incorporated by registration under Indian law, and having its principal place of business in India, but a branch office in England, may be wound up under this Act. *Commercial Bank of India*, 6 Eq. 517.

A building society under 6 & 7 Wm. 4, c. 32, might be

wound up under the old winding-up Acts (*St. George's Building Society*, 4 Drew. 154), and may now be wound up under this Act; *Midland Counties Soc.*, 11 Jur. (N. S.) 229; 13 W. R. 399; and see *Doncaster Perm. Building Soc.*, 3 Eq. 158; *Queen's Building Soc.*, 6 Ch. 815.

As to insurance company formed in the interval between the passing of the Joint Stock Companies Act, 1856, and the Amendment Act of 1857, see *Bank of Lond. Insur. Assoc.*, 6 Ch. 421.

Companies incorporated by special Act of Parliament can be wound up; *Wey and Arun Canal Co.*, 4 Eq. 197; *Bradford Navigation Co.*, 10 Eq. 331; and compare *Exmouth Docks Co.*, 17 Eq., 181.

Whether provisional directors can, by acting in the name of the company, become so associated as to form a body capable of being wound up; *quære, Imperial Anglo-Germ. Bk.*, W. N. 1872, 3, 40.

Instances of winding up mutual associations are, *Shields Marine Insur. Assoc.*, 5 Eq. 368, and *Albert Average Assoc.* 5 Ch. 597.

Who to be deemed a contributory in the event of company being wound up.

CC. In the event of an unregistered company being wound up, every person shall be deemed to be a contributory who is liable, at law or in equity, to pay or contribute to the payment of any debt or liability of the company, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members amongst themselves, or to pay or contribute to the payment of the costs charges and expenses of winding up the company, and every such contributory shall be liable to contribute to the assets of the company in the course of the winding up all sums due from him in respect of any such liability as aforesaid; but in the event of the death bankruptcy or insolvency of any contributory, or marriage of any female contributory,

the provisions hereinbefore contained with respect to the personal representatives heirs and devisees of a deceased contributory, and to the assignees of a bankrupt or insolvent contributory, and to the husband of married contributories, shall apply.

Where shares in a cost-book company had been transferred to nominees, in order to make the number of shareholders appear larger, the original shareholder was placed on the list of contributories in respect of those shares. *Cox's case*, 9 Jur. (N. S.) 1184, 33 L. J. (N. S.) Ch. 145. See *King's case*, 6 Ch. 196, distinguished.

Promoters who induced subscriptions to their undertaking by misrepresenting the amount of Capital subscribed, placed on the list for the balance of the capital not subscribed, *Moore and De la Torre's case*, 18 Eq. 661.

Evidence of membership in mutual marine insurance association. *Smith's case*, 4 Ch. 611; *Blyth & Co.'s case*, 13 Eq. 529.

As to limitation of liability of past shareholders in companies within the Stannaries Act, 1869, see s. 25 of that Act.

As to costs of winding up unregistered company; *Professional Life Assur. Assoc.*, 3 Ch. 167; *Lethbridge* v. *Adams*, 13 Eq. 547.

Power of court to restrain further proceedings.

CCI. The Court may, at any time after the presentation of a petition for winding up an unregistered company, and before making an order for winding up the company, upon the application of any creditor of the company, restrain further proceedings in any action suit or proceeding against any contributory of the company, or against the company as hereinbefore provided, upon such terms as the Court thinks fit.

As to restraining execution under this section, see *Great Ship Co.*, 10 Jur. (N. S.) 3; 33 L. J. Ch. 245.

See s. 85 and note.

Effect of order for winding up company.

CCII. Where an order has been made for winding up an unregistered company, in addition to the provisions hereinbefore contained in the case of companies formed under this Act, it is hereby further provided that no suit, action, or other legal proceeding shall be commenced or proceeded with against any contributory of the company in respect of any debt of the company, except with the leave of the Court, and subject to such terms as the Court may impose.

See s. 87. *Gray* v. *Raper*, L. R., 1 C. P. 694.

Provision in case of unregistered company.

CCIII. If any unregistered company has no power to sue or be sued in a common name, or if for any reason it appears expedient, the Court may by the order made for winding up such company, or by any subsequent order, direct that all such property, real and personal, including all interest claims and rights into and out of property real and personal, and including things in action, as may belong to or be vested in the company, or to or in any person or persons on trust for or on behalf of the company, or any part of such property, is to vest in the official liquidator or official liquidators by his or their official name or names, and thereupon the same or such part thereof as may be specified in the order shall vest accordingly, and the official liquidator or official liquidators may in his or their official name or names, or in such name or names, and after giving such indemnity as the Court directs, bring or defend

any actions suits or other legal proceeding relating to any property vested in him or them, or any actions suits or other legal proceedings necessary to be brought or defended for the purposes of effectually winding up the company and recovering the property thereof.

Registration under the Act of an unregistered company after presentation of a petition for winding up, on which an order was subsequently made, is a nullity, and accordingly, in such a case, a vesting order was made. *Hercules Insur. Co.*, 11 Eq. 321.

A vesting order may be obtained on an *ex parte* **motion,** *Albert Life Assur. Co.*, 18 W. R. 91.

Provisions in this part of Act cumulative.

CCIV. The provisions made by this part of the Act with respect to unregistered companies shall be deemed to be made in addition to and not in restriction of any provisions hereinbefore contained with respect to winding up companies by the Court, and the Court or official liquidator may, in addition to anything contained in this part of the Act, exercise any powers or do any Act in the case of unregistered companies which might be exercised or done by it or him in winding up companies formed under this Act; but an unregistered company shall not, except in the event of its being wound up, be deemed to be a company under this Act, and then only to the extent provided by this part of this Act.

PART IX.

REPEAL OF ACTS, AND TEMPORARY PROVISIONS.

Repeal of Acts.

CCV. After the commencement of this Act there shall be repealed the several Acts specified in the first part of the third schedule hereto, with this qualification, that so much of the said Acts as is set forth in the second part of the said schedule shall be hereby re-enacted and continue in force as if unrepealed.

As to Acts repealed, see note to the third schedule of the Act.

Saving clause as to repeal.

CCVI. No repeal hereby enacted shall affect,

(1.) Anything duly done under any Acts hereby repealed:

(2.) The incorporation of any company registered under any Act hereby repealed:

(3.) Any right or privilege acquired or liability incurred under any Act hereby repealed:

In *Prince* v. *Prince*, 1 Eq. 490, it was held, that the power of making contracts signed by an agent in pursuance of the 41st section of the Act of 1856, is "a right or privilege acquired" by companies formed under that Act, and is not affected by its repeal. This case showed the inexpediency of omitting in the Companies Act 1862, the

41st section of the Act of 1856; but see now the Companies Act 1867, in which it has been restored (30 & 31 Vict. c. 131, s. 37).

(4.) Any penalty, forfeiture, or other punishment, incurred in respect of any offence against any Act hereby repealed:

(5.) Table B. in the schedule annexed to the Joint-Stock Companies Act, 1856, or any part thereof, so far as the same applies to any company existing at the time of the commencement of this Act.

Saving of existing proceedings for winding up.

CCVII. Where previously to the commencement of this Act an order has been made for winding up a company under any Acts or Act hereby repealed, or a resolution has been passed for winding up a company voluntarily, such company shall be wound up in the same manner and with the same incidents as if this Act were not passed, and for the purposes of such winding up such repealed Acts or Act shall be deemed to remain in full force.

Saving of conveyance deeds.

CCVIII. Where previously to the commencement of this Act any conveyance mortgage or other deed has been made in pursuance of any Act hereby repealed, such deed shall be of the same force as if this Act had not passed, and for the purposes of such deed such repealed Act shall be deemed to remain in full force.

Compulsory registration of certain companies.

CCIX. Every insurance company completely registered under the Act passed in the eighth year of the reign of her present Majesty, chapter one hundred and ten, intituled "An Act for the Registration, Incorporation, and Regulation of Joint-Stock Companies," shall

on or before the second day of November one thousand eight hundred and sixty-two, and every other company required by any Act hereby repealed to register under the said Joint-Stock Companies Acts, or one of such Acts, and which has not so registered, shall, on or before the expiration of the thirty-first day from the commencement of this Act, register itself as a company under this Act, in manner and subject to the regulations hereinbefore contained, with this exception, that no company completely registered under the said Act of the eighth year of the reign of her present Majesty shall be required to deliver to the registrar a copy of its deed of settlement; and for the purpose of enabling such insurance companies as are mentioned in this section to register under this Act, this Act shall be deemed to come into operation immediately on the passing thereof; nevertheless the registration of such companies shall not have any effect until the time of the commencement of this Act. No fees shall be charged in respect of the registration of any company required to register by this section.

A trade partnership of more than twenty-five persons formed before the passing of 7 & 8 Vict. c. 110, and formally registered under s. 58 of that Act, but not otherwise registered, is not illegal, and some of the partners may maintain a suit on behalf of themselves and others. *Womersley* v. *Merritt*, 4 Eq. 695.

Penalty on company not registering. 21 Vict. c. 14. s. 28.

CCX. If any company required by the last section to register under this Act makes default in complying with the provisions thereof, then, from and after the day upon

which such company is required to register under this Act, until the day on which such company is registered under this Act (which it is empowered to do at any time), the following consequences shall ensue; (that is to say,)

(1.) The company shall be incapable of suing either at law or in equity, but shall not be incapable of being made a defendant to a suit either at law or in equity:

(2.) No dividend shall be paid to any shareholder in such company:

(3.) Each director or manager of the company shall for each day during which the company so being in default carries on business, incur a penalty not exceeding five pounds, and such penalty may be recovered by any person, whether a shareholder or not in the company, and be applied by him to his own use:

Nevertheless, such default shall not render the company so being in default illegal, nor subject it to any penalty or disability, other than as specified in this section; and registration under this Act shall cancel any penalty or forfeiture, and put an end to any disability which any company may have incurred under any Act hereby repealed by reason of its not having registered under the said Joint-Stock Companies Acts, 1856, 1857, or one of them.

Waterloo Life Assur. Co., 11 W. R. 134, 31 Beav. 586, 9 Jur. (N. S.) 291; *Lond. and Provincial Provident Society* v. *Ashton*, 11 W. R. 152.

Temporary power for companies to change registered office.

CCXI. Upon the application of the directors of any company registered under the Joint-Stock Companies Act as hereinbefore defined, or any of them, made within one year after the date of the commencement of this Act, sanctioned by a resolution passed at an extraordinary general meeting, but subject to the restrictions hereinafter mentioned, the Board of Trade shall have authority by their certificate in writing to change the registered office of any such company from any one part of the United Kingdom of Great Britain and Ireland to any other part thereof, and the registrar of joint-stock companies with whom the memorandum of registration of such company has been registered shall, upon receipt of such certificate, note in writing upon the margin or at the foot of the said memorandum the name of the place to which such registered office is to be transferred, and the day upon which such transfer is, pursuant to such certificate to take place, and shall attach the certificate to the memorandum, and the said registrar shall thereupon transmit to the registrar of joint-stock companies for that part of the United Kingdom to which the registered office is to be so transferred, copies of the said certificate and of the said memorandum of registration so noted certified by him; and the said registrar for the said last-mentioned part of the United Kingdom shall, upon receipt of such copies of certificate and memorandum, retain and register the same in like manner, and on payment of the like fees to him as provided in the case of the registration of an original memorandum of registration, and thereupon the place of the registered office shall, from the said last-mentioned

registration and the said day mentioned in the said certificate, be the place mentioned as such on the said certificate: Provided, however, that such change shall in nowise alter or affect anything theretofore done by the said company, or any of their rights or liabilities in respect thereof.

Restrictions on issue of certificate.

CCXII. The Board of Trade shall not issue their certificate in pursuance of the foregoing section until they are satisfied that an advertisement of the intention of the company to apply to the Board of Trade for a certificate, with a declaration that all parties objecting thereto are forthwith to apply to the Board of Trade, has been published once at the least in each of four successive weeks in the newspapers following; that is to say, in some newspaper circulating in the district where the registered office of the company is situate, and also if the company is registered in England in the *London Gazette*, if in Ireland in the *Dublin Gazette*, if in Scotland in the *Edinburgh Gazette*, nor until the said Board are satisfied that the objections, if any, that may be urged against the issue of such certificate are groundless.

FIRST SCHEDULE.

TABLE A.

REGULATIONS FOR MANAGEMENT OF A COMPANY LIMITED BY SHARES.

See Part II. chap. i. p. 134.

Shares.

(1.) If several persons are registered as joint holders of any share, any one of any persons may give effectual receipts for any dividend payable in respect of such share.

Acceptance in writing of shares should not be required. See above, p. 134; and *New Brunswick &c. Co.* v. *Muggeridge*, 4 H. & N. 160; 5 Jur. N. S. 1131. *Boy Lead Mining Co.* v. *Montague*, 8 Jur. N. S. 310; 10 C. B. N. S. 481.

(2.) Every member shall, on payment of one shilling, or such less sum as the company in general meeting may prescribe, be entitled to a certificate, under the common seal of the com-

pany, specifying the share or shares held by him, and the amount paid up thereon.

(3.) If such certificate is worn out or lost, it may be renewed, on payment of one shilling, or such less sum as the committee in general meeting may prescribe.

Calls on Shares.

(4.) The directors may, from time to time, make such calls upon the members in respect of all moneys unpaid on their shares as they think fit, provided that twenty-one days' notice at least is given of each call; and each member shall be liable to pay the amount of calls so made to the persons and at the times and places appointed by the directors.

By an article of a company's deed, it was provided that a call should be deemed to be made when the resolution of the board authorising it was passed. Another clause provided that the directors might decline to register any transfer by a shareholder indebted to them. On the 23rd of April the board passed a resolution, making a call payable on the 29th of September following. This call was not made to meet the exigencies of the company, but to excuse the directors registering a transfer. No notice was given as to the person to whom or the place where the call was to be paid. Held, granting a *mandamus*, that the applicant was not "indebted to the company," by reason of not having paid this call. *R.* v. *Inns of Court Hotel Co., ex parte Rudolf*, 11 W. R. 806.

(5.) A call shall be deemed to have been made at

the time when the resolution of the directors authorising such call was passed.

(6.) If the call payable in respect of any share is not paid before or on the day appointed for payment thereof, the holder for the time being of such share shall be liable to pay interest for the same at the rate of five pounds per cent. per annum from the day appointed for the payment thereof to the time of the actual payment.

(7.) The directors may, if they think fit, receive from any member willing to advance the same, all or any part of the moneys due upon the shares held by him beyond the sums actually called for; and upon the moneys so paid in advance, or so much thereof as from time to time exceeds the amount of the calls then made upon the shares in respect of which such advance has been made, the company may pay interest at such rate as the member paying such sum in advance and the directors agree upon.

Transfers of Shares.

(8.) The instrument of transfer of any share in the company shall be executed both by the transferor and transferee, and the transferor shall be deemed to remain a holder of such share until the name of the transferee is entered in the register book in respect thereof.

In re Orpen, 32 L. J. Ch. 633; compromised on appeal, *ibid*, 33 Ch. 67.

(9.) Shares in the company shall be transferred in the following form:—"I, *A. B.*, of , in consideration of the sum of pounds paid to me by *C. D.*, of , do hereby transfer to the said *C. D.*, the share [*or* shares] numbered standing in my name in the books of the company, to hold unto the said *C. D.*, his executors, administrators, and assigns, subject to the several conditions on which I held the same at the time of the execution hereof; and and I, the said *C. D.*, do hereby agree to take the said share [*or* shares] subject to the same conditions. As witness our hands, the day of

These regulations respecting transfers are necessary, as the Act does not (like the Act of 1856) provide a mode of transfer.

(10.) The company may decline to register any transfer of shares made by a member who is indebted to them.

(11.) The transfer books shall be closed during the fourteen days immediately preceding the ordinary general meeting in each year.

Transmission of Shares.

(12.) The executors or administrators of a deceased member shall be the only persons recognized

by the company as having any title to his share.

(13.) Any person becoming entitled to a share in consequence of the death bankruptcy or insolvency of any member, or in consequence of the marriage of any female member, may be registered as a member upon such evidence being produced as may from time to time be required by the company.

(14.) Any person who has become entitled to a share in consequence of the death bankruptcy or insolvency of any member, or in consequence of the marriage of any female member, may, instead of being registered himself, elect to have some person to be named by him registered as a transferee of such share.

(15.) The person so becoming entitled shall testify such election by executing to his nominee an instrument of transfer of such share.

(16.) The instrument of transfer shall be presented to the company, accompanied with such evidence as the directors may require to prove the title of the transferor, and thereupon the company shall register the transferee as a member.

Forfeiture of Shares.

(17.) If any member fails to pay any call on the day appointed for payment thereof, the directors may, at any time thereafter, during such time as the call remains unpaid, serve a notice on

him, requiring him to pay such call, together with interest and any expenses that may have accrued by reason of such non-payment.

(18.) The notice shall name a further day, on or before which such call and all interest and expenses that have accrued by reason of such non-payment, are to be paid. It shall also name the place where payment is to be made (the place so named being either the registered office of the company, or some other place at which calls of the company are usually made payable). The notice shall also state that in the event of non-payment at or before the time and at the place appointed, the shares in respect of which such call was made will be liable to be forfeited.

(19.) If the requisitions of any such notice as aforesaid are not complied with, any share in respect of which such notice has been given may, at any time thereafter, before payment for all calls interest and expenses due in respect thereof has been made, be forfeited by a resolution of the directors to that effect.

(20.) Any share so forfeited shall be deemed to be the property of the company, and may be disposed of in such manner as the company in general meeting thinks fit.

(21.) Any member whose shares have been forfeited, shall notwithstanding be liable to pay to the company all calls owing upon such shares at the time of the forfeiture.

(22.) A statutory declaration in writing that the call in respect of a share was made, and notice thereof given, and that default in payment of the call was made, and that the forfeiture of the share was made by a resolution of the directors to that effect, shall be sufficient evidence of the facts therein stated, as against all persons entitled to such share, and such declaration and the receipt of the company for the price of such share shall constitute a good title to such share, and a certificate of proprietorship shall be delivered to a purchaser, and thereupon he shall be deemed the holder of such share discharged from all calls due prior to such purchase, and he shall not be bound to see to the application of the purchase-money, nor shall his title to such share be affected by any irregularity in the proceedings in reference to such sale.

Conversion of Shares into Stock.

(23.) The directors may, with the sanction of the company previously given in general meeting, convert any paid-up shares into stock.

(24.) When any shares have been converted into stock, the several holders of such stock may thenceforth transfer their respective interests therein, or any part of such interest, in the same manner and subject to the same regulations as and subject to which any shares in the

capital of the company may be transferred, or as near thereto as circumstances admit.

(25.) The several holders of stock shall be entitled to participate in the dividends and profits of the company according to the amount of their respective interests in such stock; and such interests shall, in proportion to the amount thereof, confer on the holders thereof respectively the same privileges and advantages for the purpose of voting at meetings of the company, and for other purposes, as would have been conferred by shares of equal amount in the capital of the company; but so that none of such privileges or advantages, except the participation in the dividends and profits of the company, shall be conferred by any such aliquot part of consolidated stock as would not, if existing in shares, have conferred such privileges or advantages.

Increase in Capital.

(26.) The directors may, with the sanction of a special resolution of the company previously given in general meeting, increase its capital by the issue of new shares, such aggregate increase to be of such amount, and to be divided into shares of such respective amounts, as the company in general meeting directs, or, if no direction is given, as the directors think expedient.

Fraser v. *Whalley*, 2 H. & M. 10.

(27.) Subject to any direction to the contrary that may be given by the meeting that sanctions the increase of capital, all new shares shall be offered to the members in proportion to the existing shares held by them, and such offer shall be made by notice specifying the number of shares to which the member is entitled, and limiting a time within which the offer, if not accepted, will be deemed to be declined; and after the expiration of such time, or on the receipt of an intimation from the member to whom such notice is given that he declines to accept the shares offered, the directors may dispose of the same in such manner as they think most beneficial to the company.

(28.) Any capital raised by the creation of new shares shall be considered as part of the original capital, and shall be subject to the same provisions with reference to the payment of calls, and the forfeiture of shares on non-payment of calls, or otherwise, as if it had been part of the original capital.

General Meetings.

(29.) The first general meeting shall be held at such time, not being more than six months after the registration of the company, and at such place as the directors may determine.

(30.) Subsequent general meetings shall be held at such time and place as may be prescribed by

the company in general meeting; and if no other time or place is prescribed, a general meeting shall be held on the first Monday in February in every year, at such place as may be determined by the directors.

(31.) *The above-mentioned general meetings shall be called ordinary meetings; all other general meetings shall be called extraordinary.*

(32.) The directors may, whenever they think fit, and they shall upon a requisition made in writing by not less than one-fifth in number of the members of the company, convene an extraordinary general meeting.

(33.) Any requisition made by the members shall express the object of the meeting proposed to be called, and shall be left at the registered office of the company.

(34.) Upon the receipt of such requisition the directors shall forthwith proceed to convene an extraordinary general meeting. If they do not proceed to convene the same within twenty-one days from the date of the requisition, the requisitionists, or any other members amounting to the required number, may themselves convene an extraordinary general meeting.

Proceedings at General Meetings.

(35.) Seven days' notice at the least, specifying the place the day and the hour of meeting, and in case of special business, the general

nature of such business shall be given to the members in manner hereinafter mentioned, or in such other manner, if any, as may be prescribed by the company in general meeting; but the non-receipt of such notice by any member shall not invalidate the proceedings at any general meeting.

(36.) All business shall be deemed special that is transacted at any extraordinary meeting, and all that is transacted at an ordinary meeting, with the exception of sanctioning a dividend and the consideration of the accounts balance sheets and the ordinary report of the directors.

(37.) No business shall be transacted at any general meeting, except the declaration of a dividend, unless a quorum of members is present, at the time when the meeting proceeds to business: and such quorum shall be ascertained as follows; that is to say, if the persons who have taken shares in the company at the time of the meeting do not exceed ten in number, the quorum shall be five; if they exceed ten there shall be added to the above quorum one for every five additional members up to fifty, and one for every additional ten members after fifty, with this limitation, that no quorum shall in any case exceed twenty.

(38.) If within one hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved: in any other case

it shall stand adjourned to the same day in the next week, at the same time and place; and, if at such adjourned meeting a quorum is not present, it shall be adjourned *sine die.*

(39.) The chairman (if any) of the board of directors shall preside as chairman at every general meeting of the company.

(40.) If there is no such chairman, or if at any meeting he is not present within fifteen minutes after the time appointed for holding the meeting, the members present shall choose some one of their number to be chairman.

(41.) The chairman may, with the consent of the meeting, adjourn any meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

(42.) At any general meeting, unless a poll is demanded by at least five members, a declaration by the chairman that a resolution has been carried, and an entry to that effect in the book of proceedings of the company, shall be sufficient evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against such resolution.

(43.) If a poll is demanded by five or more members it shall be taken in such manner as the chairman directs, and the result of such poll shall be deemed to be the resolution of the company in general meeting. In the case of

an equality of votes at any general meeting the chairman shall be entitled to a second or casting vote.

Votes of Members.

(44.) Every member shall have one vote for every share up to ten: he shall have an additional vote for every five shares beyond the first ten shares up to one hundred, and an additional vote for every ten shares beyond the first hundred shares.

(45.) If any member is a lunatic or idiot he may vote by his committee, curator bonis, or other legal curator.

(46.) If one or more persons are jointly entitled to a share or shares, the member whose name stands first in the register of members as one of the holders of such share or shares, and no other, shall be entitled to vote in respect of the same.

(47.) No member shall be entitled to vote at any general meeting unless all calls due from him have been paid, and no member shall be entitled to vote in respect of any share that he has acquired by transfer at any meeting held after the expiration of three months from the registration of the company, unless he has been possessed of the share in respect of which he claims to vote for at least three months pre-

viously to the time of holding the meeting at which he proposes to vote.

(48.) Votes may be given either personally or by proxy.

By the Stamp Act 1870, (33 & 34 Vict. c. 97, s. 102,) proxies for voting are subject to a penny stamp duty. The penalty for executing or voting or attempting to vote under an unstamped proxy is £50, and a vote so given or tendered is void.

(49.) The instrument appointing a proxy shall be in writing, under the hand of the appointor, or if such appointor is a corporation, under their common seal, and shall be attested by one or more witness or witnesses: no person shall be appointed a proxy who is not a member of the company.

(50.) The instrument appointing a proxy shall be deposited at the registered office of the company not less than seventy-two hours before the time for holding the meeting at which the person named in such instrument proposes to vote, but no instrument appointing a proxy shall be valid after the expiration of twelve months from the date of its execution.

(51.) Any instrument appointing a proxy shall be in the following form:—

Company Limited.

I of in the county of being a member of the company limited, and entitled to vote or votes, hereby appoint of as

my proxy, to vote for me and on my behalf at the [ordinary *or* extraordinary, *as the case may be*] general meeting of the company to be held on the day of and at any adjournment thereof [*or, at any meeting of the company that may be held in the year*].

As witness my hand, this day of

Signed by the said in the presence of

The last words in italics must be omitted since by 33 & 34 Vict., c. 97, s. 102 (1) a proxy is available only at a specified meeting or at an adjournment thereof.

Directors.

(52.) The number of the directors, and the names of the first directors, shall be determined by the subscribers of the memorandum of association.

(53.) Until directors are appointed the subscribers of the memorandum of association shall be deemed to be directors.

(54.) The future remuneration of the directors, and their remuneration for services performed previously to the first general meeting, shall be determined by the company in general meeting.

Powers of Directors.

(55.) The business of the company shall be managed by the directors, who may pay all

expenses incurred in getting up and registering the company, and may exercise all such powers of the company as are not by the foregoing Act, or by these articles, required to be exercised by the company in general meeting, subject nevertheless to any regulations of these articles, to the provisions of the foregoing Act, and to such regulations, not being inconsistent with the aforesaid regulations or provisions, as may be prescribed by the company in general meeting; but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if such regulation had not been made.

(56.) The continuing directors may act, notwithstanding any vacancy in their body.

Disqualification of Directors.

(57.) The office of director shall be vacated,—

If he holds any other office or place of profit under the company:

If he become bankrupt or insolvent:

If he is concerned in or participates in the profits of any contract with the company; (a)

But the above rules shall be subject to the fol-

(a) See *Imperial Mercantile Credit Association* v. *Coleman*, L. R., H. L. 189.

lowing exceptions: That no director shall vacate his office by reason of his being a member of any company which has entered into contracts with or done any work for the company of which he is director; nevertheless, he shall not vote in respect of such contract or work; and if he does so vote, his vote shall not be counted.

Rotation of Directors.

(58.) At the first ordinary meeting after the registration of the company, the whole of the directors shall retire from office; and at the first ordinary meeting in every subsequent year one-third of the directors for the time being, or if their number is not a multiple of three, then the number nearest to one-third, shall retire from office.

(59.) The one-third or other nearest number to retire during the first and second years ensuing the first ordinary meeting of the company shall, unless the directors agree among themselves, be determined by ballot: In every subsequent year the one-third or other nearest number who have been longest in office shall retire.

(60.) A retiring director shall be re-eligible.

(61.) The company at the general meeting at which any directors retire in manner aforesaid shall fill up the vacated offices by electing a like number of persons.

(62.) If at any meeting at which an election of directors ought to take place the places of the vacating directors are not filled up, the meeting shall stand adjourned till the same day in the next week, at the same time and place; and if at such adjourned meeting the places of the vacating directors are not filled up, the vacating directors or such of them as have not had their places filled up, shall continue in office until the ordinary meeting in the next year, and so on from time to time until their places are filled up.

(63.) The company may from time to time, in general meeting, increase or reduce the number of directors, and may also determine in what rotation such increased or reduced number is to go out of office.

(64.) Any casual vacancy occurring in the board of directors may be filled up by the directors, but any person so chosen shall retain his office so long only as the vacating director would have retained the same if no vacancy had occurred.

(65.) The company, in general meeting, may, by a special resolution, remove any director before the expiration of his period of office, and may by an ordinary resolution appoint another person in his stead; the person so appointed shall hold office during such time only as the director in whose place he is appointed would have held the same if he had not been removed.

Proceedings of Directors.

(66.) The directors may meet together for the despatch of business, adjourn, and otherwise regulate their meetings as they think fit, and determine the quorum necessary for the transaction of business: questions arising at any meeting shall be decided by a majority of votes: in case of an equality of votes the chairman shall have a second or casting vote: a director may at any time summon a meeting of the directors.

A provision in Articles of Association that a director shall not vote in respect of a contract in which he is interested, does not preclude him from voting at a general meeting. *East Pant Lead Mining Co.* v. *Merryweather* 10 Jur. (N. S.) 1231.

(67.) The directors may elect a chairman of their meetings, and determine the period for which he is to hold office; but if no such chairman is elected, or if at any meeting the chairman is not present at the time appointed for holding the same, the directors present shall choose some one of their number to be chairman of such meeting.

(68.) The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit; any committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on them by the directors.

(69.) A committee may elect a chairman of their meetings: if no such chairman is elected, or if he is not present at the time appointed for holding the same, the members present shall choose one of their number to be chairman of such meeting.

(70.) A committee may meet and adjourn as they think proper: questions arising at any meeting shall be determined by a majority of votes of the members present; and in case of an equality of votes the chairman shall have a second or casting vote.

(71.) All acts done by any meeting of the directors, or of a committee of directors, or by any person acting as a director, shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such directors or persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

Dividends.

See p. 56

(72.) The directors may, with the sanction of the company in general meeting, declare a dividend to be paid to the members in proportion to their shares.

(73.) No dividend shall be payable except out of the profits arising from the business of the company.

(74.) The directors may, before recommending any dividend, set aside out of the profits of the company such sum as they think proper as a reserved fund to meet contingencies, or for equalising dividends, or for repairing or maintaining the works connected with the business of the company, or any part thereof: and the directors may invest the sum so set apart as a reserved fund upon such securities as they may select.

(75.) The directors may deduct from the dividends payable to any member all such sums of money as may be due from him to the company on account of calls or otherwise.

(76.) Notice of any dividend that may have been declared shall be given to each member in manner hereinafter mentioned; and all dividends unclaimed for three years, after having been declared, may be forfeited by the directors for the benefit of the company.

(77.) No dividend shall bear interest as against the company.

Accounts.

(78.) The directors shall cause true accounts to be kept,—

Of the stock in trade of the company:

Of the sums of money received and expended by the company, and the matter in respect of which such receipt and expenditure takes place: and

Of the credits and liabilities of the company: The books of account shall be kept at the registered office of the company, and, subject to any reasonable restrictions as to the time and manner of inspecting the same that may be imposed by the company in general meeting, shall be open to the inspection of the members during the hours of business.

(79.) Once at the least in every year the directors shall lay before the company in general meeting a statement of the income and expenditure for the past year, made up to a date not more than three months before such meeting.

(80.) The statement so made shall show, arranged under the most convenient heads, the amount of gross income, distinguishing the several sources from which it has been derived, and the amount of gross expenditure, distinguishing the expense of the establishment, salaries, and other like matters. Every item of expenditure fairly chargeable against the year's income shall be brought into account, so that a just balance of profit and loss may be laid before the meeting: and in cases where any item of expenditure which may in fairness be distributed over several years has been incurred in any one year the whole amount of such item shall be stated, with the addition of the reasons why only a portion of such expenditure is charged against the income of the year.

(81.) A balance sheet shall be made out in every

year, and laid before the company in general meeting, and such balance sheet shall contain a summary of the property and liabilities of the company, arranged under the heads appearing in the form annexed to this table, or as near thereto as circumstances admit.

(82.) A printed copy of such balance sheet shall, seven days previously to such meeting, be served on every member in the manner in which notices are hereinafter directed to be served.

Audit.

(83.) Once at the least in every year the accounts of the company shall be examined, and the correctness of the balance sheet ascertained, by one or more auditor or auditors.

(84.) The first auditors shall be appointed by the directors; subsequent auditors shall be appointed by the company in general meeting.

(85.) If one only auditor is appointed, all the provisions herein contained relating to auditors shall apply to him.

(86.) The auditors may be members of the company; but no person is eligible as an auditor who is interested otherwise than as a member in any transaction of the company, and no director or other officer of the company is eligible during his continuance in office.

(87.) The election of auditors shall be made by the company at their ordinary meeting in each year.

(88.) The remuneration of the first auditors shall be fixed by the directors; that of subsequent auditors shall be fixed by the company in general meeting.

(89.) Any auditor shall be re-eligible on his quitting office.

(90.) If any casual vacancy occurs in the office of any auditor appointed by the company, the directors shall forthwith call an extraordinary general meeting for the purpose of supplying the same.

(91.) If no election of auditors is made in manner aforesaid the Board of Trade may, on the application of not less than five members of the company, appoint an auditor for the current year, and fix the remuneration to be paid to him by the company for his services.

(92.) Every auditor shall be supplied with a copy of the balance sheet, and it shall be his duty to examine the same, with the accounts and vouchers relating thereto.

(93.) Every auditor shall have a list delivered to him of all books kept by the company, and shall at all reasonable times have access to the books and accounts of the company: he may, at the expense of the company, employ accountants or other persons to assist him in investigating such accounts, and he may, in relation to

such accounts, examine the directors or any other officer of the company.

(94.) The auditors shall make a report to the members upon the balance sheet and accounts, and in every such report they shall state whether, in their opinion, the balance sheet is a full and fair balance sheet, containing the particulars required by these regulations, and properly drawn up, so as to exhibit a true and correct view of the state of the company's affairs; and in case they have called for explanations or information from the directors, whether such explanations or information have been given by the directors, and whether they have been satisfactory; and such report shall be read, together with the report of the directors, at the ordinary meeting.

Notices.

(95.) A notice may be served by the company upon any member either personally, or by sending it through the post in a prepaid letter addressed to such member at his registered place of abode.

Parol notice of the withdrawal of a member held to be sufficient, in the case of a Mutual Guarantee Society, where no particular form of notice was required to be given, *ex parte Hawthorne*, 8 Jur. N. S. 934; 31 L. J. N. S. Ch. 625.

(96.) All notices directed to be given to the members shall, with respect to any share to which persons are jointly entitled, be given to whichever of such persons is named first in the register of members; and notice so given shall be sufficient notice to all the holders of such share.

(97.) Any notice, if served by post, shall be deemed to have been served at the time when the letter containing the same would be delivered in the ordinary course of the post; and in proving such service it shall be sufficient to prove that the letter containing the notice was properly addressed and put into the post-office.

See *Harris' case*, 7 Ch. 587; *Wall's case*, 15 Eq. 18.

See Article 81 *of Table A.*

DR. BALANCE-SHEET of the Co., made up to 18 . CR.

CAPITAL AND LIABILITIES.		£ s. d.	£ s. d.	PROPERTY AND ASSETS.		£ s. d.	£ s. d.
I. CAPITAL .	Showing: 1. The number of shares .. .. 2. The amount paid per share .. 3. If any arrears of calls, the nature of the arrear, and the names of the defaulters. 4. The particulars of any forfeited shares			III. PROPERTY held by the Company	Showing: 7. Immovable property, distinguishing— (a) Freehold land .. .. (b) " buildings .. (c) Leasehold " .. 8. Movable property distinguishing— (d) Stock in trade .. .. (e) Plant .. .. .. The cost to be stated with deductions for deterioration in value as charged to the reserve fund or profit and loss.		
II. DEBTS AND LIABILITIES of the Company. .	Showing: 5. The amount of loans on mortgages or debenture bonds. 6. The amount of debts owing by the company, distinguishing— (a) Debts for which acceptances have been given. (b) Debts to tradesmen for supplies of stock in trade or other articles. (c) Debts for law expenses. (d) Debts for interest on debentures or other loans. (e) Unclaimed dividends. (f) Debts not enumerated above.			IV. DEBTS owing to the Company ..	Showing: 9. Debts considered good for which the Company hold bills or other securities. 10. Debts considered good for which the Company hold no security. 11. Debts considered doubtful and bad. Any debt due from a director or other officer of the Company to be separately stated.		
VI. RESERVE FUND	Showing: The amount set aside from profits to meet contingencies.			V. CASH AND INVESTMENTS	Showing: 12. The nature of investment and rate of interest. 13. The amount of cash, where lodged, and if bearing interest.		
VII PROFIT AND LOSS ..	Showing: The disposable balance for payment of dividend, &c.						
CONTINGENT LIABILITIES	Claims against the Company not acknowledged as debts. Moneys for which the Company is contingently liable.						

TABLE B.

See s. 17 of the Act, supra.

TABLE OF FEES TO BE PAID TO THE REGISTRAR OF JOINT STOCK COMPANIES BY A COMPANY HAVING A CAPITAL DIVIDED INTO SHARES.

	£	s.	d.
For registration of a company whose nominal capital does not exceed 2000*l.*, a fee of - - - - - - -	2	0	0
For registration of a company whose nominal capital exceeds 2000*l.*, the above fee of 2*l.*, with the following additional fees, regulated according to the amount of nominal capital (that is to say)	£	s.	d.
For every 1000*l.* of nominal capital, or part of 1000*l.*, after the first 2000*l.*, up to 5000*l.* -	1	0	0
For every 1000*l.* of nominal capital, or part of 1000*l.*, after the first 5000*l.*, up to 100,000*l.*	0	5	0
For every 1000*l.* of nominal capital, or part of 1000*l.*, after the first 100,000*l.* - - -	0	1	0

	£	s.	d.
For registration of any increase of capital made after the first registration of the company, the same fees per 1000*l.* or part of 1000*l.*, as would have been payable if such increased capital had formed part of the original capital at the time of registration.			
Provided that no company shall be liable to pay in respect of nominal capital on registration, or afterwards, any greater amount of fees than 50*l.*, taking into account in the case of fees payable on an increase of capital after registration the fees paid on registration.			
For registration of any existing company, except such companies as are by this Act exempted from payment of fees in respect of registration under this Act, the same fee as is charged for registering a new company.			
For registering any document hereby required or authorized to be registered, other than the memorandum of association - - - - - - - -	0	5	0
For making a record of any fact hereby authorized or required to be recorded by the registrar of companies, a fee of - - - - - - - -	0	5	0

TABLE C.

See s. 17 of the Act, supra.

TABLE OF FEES TO BE PAID TO THE REGISTRAR OF JOINT STOCK COMPANIES BY A COMPANY NOT HAVING A CAPITAL DIVIDED INTO SHARES.

	£	s.	d.
For registration of a company whose number of members, as stated in the articles of association, does not exceed 20	2	0	0
For registration of a company whose number of members, as stated in the articles of association, exceeds 20, but does not exceed 100 - - - -	5	0	0
For registration of a company in which the number of members as stated in the articles of association, exceeds 100, but is not stated to be unlimited, the above fee of 5*l.*, with an additional 5*s.* for every 50 members or less number than 50 members after the first 100.			
For registration of a company in which the number of members is stated in the articles of association to be unlimited, a fee of - - - - - - - -	20	0	0
For registration of any increase on the number of members made after the registration of the company in respect of every 50 members, or less than 50 members of such increase - - - -	0	5	0

	£	s.	d.
Provided that no one company shall be liable to pay on the whole a greater fee than 20*l.* in respect of its number of members, taking into account the fee paid on the first registration of the company.			
For registration of any existing company, except such companies as are by this Act exempted from payment of fees in respect of registration under this Act, the same fee as is charged for registering a new company.			
For registering any document hereby required or authorized to be registered, other than the memorandum of association- - - - - - -	0	5	0
For making a record of any fact hereby authorized or required to be recorded by the registrar of companies, a fee of - -	0	5	0

FORM D.

See s. 44 of the Act, supra.

Form of Statement referred to in Part III. of the Act.

* The capital of the company is divided into shares of each.

The number of shares issued is

Calls to the amount of pounds per share have been made, under which the sum of pounds has been received.

The liabilities of the company on the first day of January (*or* July) were,—

Debts owing to sundry persons by the company:

On judgment, £

On specialty, £

On notes or bills, £

On simple contracts, £

On estimated liabilities, £

The assets of the company on that day were,—

Government securities [*stating them*], £

Bills of exchange and promissory notes, £

Cash at the bankers, £

Other securities, £

* If the company has no capital divided into shares, the portion of the statement relating to capital and shares must be omitted.

SECOND SCHEDULE.

For other forms of Memoranda and Articles of Association, see part II. of this App.

FORM A.

MEMORANDUM OF ASSOCIATION OF A COMPANY LIMITED BY SHARES.

1st. The name of the company is "The Eastern Steam Packet Company, Limited."

2nd. The registered office of the company will be situate in England.

3rd. The objects for which the company is established are, "the conveyance of passengers and goods in ships or boats between such places as the company may from time to time determine, and the doing all such other things as are incidental or conducive to the attainment of the above object."

4th. The liability of the members is limited.

5th. The capital of the company is two hundred thousand pounds, divided into one thousand shares of two hundred pounds each.

WE, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of

association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

Names, Addresses, and Descriptions of Subscribers	Number of Shares taken by each Subscriber.
1. John Jones, of , in the county of Merchant	200
2. John Smith, of , in the county of .	25
3. Thomas Green, of , in the county of .	30
4. John Thompson, of , in the county of .	40
5. Caleb White, of , in the county of .	15
6. Andrew Brown, of , in the county of .	5
7. Cæsar White, of , in the county of .	10
Total shares taken	325

Dated the 22nd day of November, 1861.

Witness to the above signatures,

A. B., No. 13, Hute Street, Clerkenwell, Middlesex.

FORM B.

MEMORANDUM AND ARTICLES OF ASSOCIATION OF A COMPANY LIMITED BY GUARANTEE, AND NOT HAVING A CAPITAL DIVIDED INTO SHARES.

Memorandum of Association.

1st. The name of the company is "The Mutual London Marine Association, Limited."

2nd. The registered office of the company will be situate in England.

3rd. The objects for which the company is established are "the mutual insurance of ships belonging to members of the company, and the doing all such other things as are incidental or conducive to the attainment of the above objects."

4th. Every member of the company undertakes to contribute to the assets of the company in the event of the same being wound up during the time that he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before the time at which he ceases to be a member, and the costs charges and expenses of winding up the same, and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required not exceeding ten pounds.

WE, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association.

Names, Addresses, and Descriptions of Subscribers.

1. John Jones, of , in the county of , Merchant.
2. John Smith, of in the county of
3. Thomas Green, of in the county of
4. John Thompson, of in the county of
5. Caleb White, of in the county of
6. Andrew Brown, of in the county of
7. Cæsar White, of in the county of

Dated the 22nd day of November, 1861.

Witness to the above signatures,

A. B., No. 13, Hute Street, Clerkenwell, Middlesex.

ARTICLES OF ASSOCIATION TO ACCOMPANY PRECEDING MEMORANDUM OF ASSOCIATION.

(1.) The company, for the purpose of registration, is declared to consist of five hundred members.

(2.) The directors hereinafter mentioned may, whenever the business of the association requires it, register an increase of members.

Definition of Members.

(3.) Every person shall be deemed to have agreed to become a member of the company who insures any ship or share in a ship in pursuance of the regulations hereinafter contained.

General Meetings.

(4.) The first general meeting shall be held at such time, not being more than three months after the incorporation of the company, and at such place as the directors may determine.

(5.) Subsequent general meetings shall be held at such time and place as may be prescribed by the company in general meeting; and if no other time or place is prescribed, a general meeting shall be held on the first Monday in February in every year, at such place as may be determined by the directors.

(6.) The above-mentioned general meetings shall be called ordinary meetings; all other general meetings shall be called extraordinary.

(7.) The directors may, whenever they think fit, and they shall, upon a requisition made in writing by any five or more members, convene an extraordinary general meeting.

(8.) Any requisition made by the members shall express the object of the meeting proposed to be called, and shall be left at the registered office of the company.

(9.) Upon the receipt of such requisition the directors shall forthwith proceed to convene a general meeting: if they do not proceed to convene the same within twenty-one days from the date of the requisition, the requisitionists or any other five members, may themselves convene a meeting.

Proceedings at General Meetings.

(10.) Seven days' notice at the least, specifying the place, the day, and the hour of meeting, and in case of special business the general nature of such business, shall be given to the members in manner

hereinafter mentioned, or in such other manner, if any, as may be prescribed by the company in general meeting; but the non-receipt of such notice by any member shall not invalidate the proceedings at any general meeting.

(11.) All business shall be deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting, with the exception of the consideration of the accounts balance sheets and the ordinary report of the directors.

(12.) No business shall be transacted at any meeting except the declaration of a dividend, unless a quorum of members is present at the commencement of such business; and such quorum shall be ascertained as follows: that is to say if the members of the company at the time of the meeting do not exceed ten in number, the quorum shall be five; if they exceed ten there shall be added to the above quorum one for every five additional members up to fifty, and one for every ten additional members after fifty, with this limitation, that no quorum shall in any case exceed thirty.

(13.) If within one hour from the time appointed for the meeting a quorum of members is not present, the meeting, if convened upon the requisition of the members, shall be dissolved: in any other case it shall stand adjourned to the same day in the following week at the same time and place; and if at such adjourned meeting a quorum of

members is not present, it shall be adjourned *sine die.*

(14.) The chairman (if any) of the directors shall preside as chairman at every general meeting of the company.

(15.) If there is no such chairman, or if at any meeting he is not present at the time of holding the same, the members present shall choose some one of their number to be chairman of such meeting.

(16.) The chairman may, with the consent of the meeting, adjourn any meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

(17.) At any general meeting, unless a poll is demanded by at least five members, a declaration by the chairman that a resolution has been carried, and an entry to that effect in the book of proceedings of the company, shall be sufficient evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against such resolution.

(18.) If a poll is demanded in manner aforesaid, the same shall be taken in such manner as the chairman directs, and the result of such poll shall be deemed to be the resolution of the company in general meeting.

Votes of Members.

(19.) Every member shall have one vote and no more.

(20.) If any member is a lunatic or idiot he may vote by his committee, curator bonis, or other legal curator.

(21.) No member shall be entitled to vote at any meeting unless all moneys due from him to the company have been paid.

(22.) Votes may be given either personally or by proxies: a proxy shall be appointed in writing under the hand of the appointor, or if such appointor is a corporation, under its common seal.

(23.) No person shall be appointed a proxy who is not a member, and the instrument appointing him shall be deposited at the registered office of the company not less than forty-eight hours before the time of holding the meeting at which he proposes to vote.

(24.) Any instrument appointing a proxy shall be in the following form:—

Company Limited.

of in the county of being a member of the company limited, hereby appoint of as my proxy, to vote for me and on my behalf at the [ordinary *or* extra-

ordinary, *as the case may be*] general meeting of the company to be held on the day of , and at any adjournment thereof to be held on the day of next [*or, at any meeting of the company that may be held in the year*].

As witness my hand this day of

Signed by the said in the presence of

The words in italics must be omitted, see note to Table A., art. 51.

Directors.

(25.) The number of the directors, and the names of the first directors, shall be determined by the subscribers of the memorandum of association.

(26.) Until directors are appointed, the subscribers of the memorandum of association shall for all the purposes of this Act be deemed to be directors.

Powers of Directors.

(27.) The business of the company shall be managed by the directors, who may exercise all such powers of the company as are not hereby required to be exercised by the company in general meeting; but no regulation made by the company in general meeting shall invalidate any prior act of the directors which

would have been valid if such regulation had not been made.

Election of Directors.

(28.) The directors shall be elected annually by the company in general meeting.

Business of Company.

[*Here insert Rules as to Mode in which Business of Insurance is to be conducted.*]

Accounts.

(29.) The accounts of the company shall be audited by a committee of five members, to be called the Audit Committee.

(30.) The first audit committee shall be nominated by the directors out of the body of members.

(31.) Subsequent audit committees shall be nominated by the members at the ordinary general meeting in each year.

(32.) The audit committee shall be supplied with a copy of the balance sheet, and it shall be their duty to examine the same with the accounts and vouchers relating thereto.

(33.) The audit committee shall have a list delivered to them of all books kept by the company, and they shall at all reasonable times

have access to the books and accounts of the company: they may, at the expense of the company, employ accountants or other persons to assist them in investigating such accounts, and they may in relation to such accounts examine the directors or any other officer of the company.

(34.) The audit committee shall make a report to the members upon the balance sheet and accounts, and in every such report they shall state whether in their opinion the balance sheet is a full and fair balance sheet, containing the particulars required by these regulations of the company, and properly drawn up, so as to exhibit a true and correct view of the state of the company's affairs; and in case they have called for explanation or information from the directors whether such explanations or information have been given by the directors, and whether they have been satisfactory, and such report shall be read together with the report of the directors at the ordinary meeting.

Notices.

(35) A notice may be served by the company upon any member either personally, or by sending it through the post in a pre-paid letter addressed to such member at his registered place of abode.

(36.) Any notice, if served by post, shall be deemed to have been served at the time when the letter containing the same would be delivered in the ordinary course of the post; and in proving such service it shall be sufficient to prove that the letter containing the notice was properly addressed, and put into the post-office.

Winding up.

(37.) The company shall be wound up voluntarily whenever an extraordinary resolution, as defined by the Companies Act 1862, is passed, requiring the company to be wound up voluntarily.

See section 129 of the Act, supra.

Names, Addresses, and Descriptions of Subscribers.

1. John Jones, of , in the county of , Merchant.
2. John Smith, of , in the county of
3. Thomas Green, of , in the county of
4. John Thompson, of , in the county of
5. Caleb White, of , in the county of
6. Andrew Brown, of , in the county of
7. Cæsar White, of , in the county of

Dated the 22nd day of November, 1861.

Witness to the above signatures,
A. B., No. 13, Hute Street, Clerkenwell,
Middlesex.

FORM C.

MEMORANDUM AND ARTICLES OF ASSOCIATION OF A COMPANY LIMITED BY GUARANTEE, AND HAVING A CAPITAL DIVIDED INTO SHARES.

Memorandum of Association.

1st. The name of the company is "The Highland Hotel Company, Limited."

2nd. The registered office of the company will be situate in Scotland.

3rd. The objects for which the company is established are "the facilitating travelling in the Highlands of Scotland, by providing hotels and conveyances by sea and by land for the accommodation of travellers, and the doing all such other things as are incidental or conducive to the attainment of the above object."

4th. Every member of the company undertakes to contribute to the assets of the company in the event of the same being wound up during the time that he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before the time at which he ceases to be a member, and the costs charges and expenses of winding up the same, and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required not exceeding twenty pounds.

WE, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association.

Names, Addresses, and Descriptions of Subscribers.

1. John Jones, of , in the county of , Merchant
2. John Smith, of , in the county of
3. Thomas Green, of , in the county of
4. John Thompson, of , in the county of
5. Caleb White, of , in the county of
6. Andrew Brown, of , in the county of
7. Cæsar White, of , in the county of

Dated the 22nd day of November, 1861.

Witness to the above signatures,

A. B., No. 13, Hute Street, Clerkenwell, Middlesex.

Articles of Association to accompany preceding Memorandum of Association.

1. The capital of the company shall consist of five hundred thousand pounds, divided into five thousand shares of one hundred pounds each.

2. The directors may, with the sanction of the company in general meeting, reduce the amount of hares.

3. The directors may, with the sanction of the company in general meeting, cancel any shares belonging to the company.

4. All the articles of Table A. shall be deemed to

be incorporated with these articles, and to apply to the company.

WE, the several persons whose names and addresses are subscribed, agree to take the number of shares in the capital of the company set opposite our respective names.

Names, Addresses, and Descriptions of Subscribers.	Number of Shares taken by each Subscriber
1. John Jones, of , in the county of .	200
2. John Smith, of , in the county of .	25
3. Thomas Green, of , in the county of .	30
4. John Thompson, of , in the county of .	40
5. Caleb White, of , in the county of .	15
6. Andrew Brown, of , in the county of .	5
7. Cæsar White, of , in the county of .	10
Total shares taken	325

Dated the 22nd day of November, 1861.

Witness to the above signatures,

A. B., No. 13, Hute Street, Clerkenwell, Middlesex.

FORM D.

MEMORANDUM AND ARTICLES OF ASSOCIATION OF AN UNLIMITED COMPANY, HAVING A CAPITAL DIVIDED INTO SHARES.

Memorandum of Association.

1st. The name of the company is "The Patent Stereotype Company."

2nd. The registered office of the company will be situate in England.

3rd. The objects for which the company is established are, "the working of a patent method of founding and casting stereotype plates, of which method John Smith, of London, is the sole patentee."

WE, the several persons whose names are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association.

Names, Addresses, and Descriptions of Subscribers.

1. John Jones, of , in the county of , Merchant.
2. John Smith, of , in the county of
3. Thomas Green, of , in the county of
4. John Thompson, of , in the county of
5. Caleb White, of , in the county of
6. Andrew Brown, of , in the county of
7. Abel Brown, of , in the county of

Dated 22nd day of November, 1861.

Witness to the above signatures,

A. B., No. 20, Bond Street, Middlesex.

Articles of Association to accompany the preceding Memorandum of Association.

Capital of the Company.

The capital of the company is two thousand pounds, divided into twenty shares of one hundred pounds each.

Application of Table A.

All the articles of Table A. shall be deemed to be incorporated with these articles, and to apply to the company.

WE, the several persons whose names and addresses are subscribed, agree to take the number of shares in the capital of the company set opposite our respective names.

Names, Addresses, and Descriptions of Subscribers.	Number of Shares taken by Subscribers
1. John Jones, of , in the county of , Merchant	1
2 John Smith, of , in the county of ,	5
3. Thomas Green, of , in the county of ,	2
4. John Thompson, of , in the county of ,	2
5 Caleb White, of , in the county of ,	3
6. Andrew Brown, of , in the county of ,	4
7. Cæsar White, of , in the county of ,	1
Total shares taken	18

Dated the 22nd day of November, 1861.

Witness to the above signatures,

A. B., No. 20, Bond Street, Middlesex.

See section 26

FORM E. as required by the Second Part of the Act.

SUMMARY of CAPITAL and SHARES of the Company, made up to the day of

Nominal Capital £ divided into Shares of £ each.
Number of Shares taken up to the day of
There has been called up on each Share £
Total amount of Calls received £
Total amount of Calls unpaid £

LIST of Persons holding Shares in the Company on the day of , and of persons who have held Shares therein at any time during the Year immediately preceding the said day of , showing their Names and Addresses, and an Account of their Shares so held.

Folio in Register Ledger containing particulars.	Names, Addresses, and Occupations				Account of Shares.					Remarks
	Surname	Christian Name.	Address.	Occupation	Shares held by existing members on the day of	Additional Shares held by existing members during preceding Year		Shares held by persons no longer members.		
						Number.	Date of Transfer	Number	Date of Transfer	

FORM F.

LICENSE to hold LANDS.

The Lords of the Committee of Privy Council appointed for the consideration of matters relating to trade and foreign plantations hereby license the

Association, Limited to hold the lands hereunder described [*insert description of lands*]. The conditions of this license are [*insert conditions if any*]

See section 21.

THIRD SCHEDULE.

FIRST PART.

Date and Chapter of Act.	Title of Act.
21 & 22 Geo. 3, c. 46 (Parliament of Ireland.)	An Act to promote trade and manufactures by regulating and encouraging partnerships. (*a*)
7 & 8 Vict. c. 110	An Act for the registration, incorporation, and regulation of joint stock companies. (*b*)
7 & 8 Vict. c. 111	An Act for facilitating the winding up the affairs of joint stock companies unable to meet their pecuniary engagements. (*c*)
7 & 8 Vict. c. 113	An Act to regulate joint stock banks in England. (*d*)
8 & 9 Vict. c. 98	An Act for facilitating the winding up the affairs of joint stock companies in Ireland unable to meet their pecuniary engagements. (*e*)
9 & 10 Vict. c. 28	An Act to facilitate the dissolution of certain railway companies. (*f*)
9 & 10 Vict. c. 75	An Act to regulate joint stock banks in Scotland and Ireland. (*g*)
10 & 11 Vict. c. 78	An Act to amend an Act for the registration, incorporation, and regulation of joint stock companies. (*h*)
11 & 12 Vict. c. 45	An Act to amend the Acts for facilitating the winding up the affairs of joint stock companies unable to meet their pecuniary engagements, and also to facilitate the dissolution and winding up of joint stock companies and other partnerships. (*i*)
12 & 13 Vict. c. 108	An Act to amend the Joint Stock Companies Winding-up Act, 1848. (*j*)
19 & 20 Vict. c. 47	An Act for the incorporation and regulation of joint stock companies and other associations. (*k*)

Date and Chapter of Act.	Title of Act.
20 & 21 Vict. c. 14 .	An Act to amend the Joint Stock Companies Act, 1856. (*l*)
20 & 21 Vict. c. 49 . .	An Act to amend the law relating to banking companies. (*m*)
20 & 21 Vict. c. 78 .	An Act to amend the Act seven and eight Victoria, chapter one hundred and eleven, for facilitating the winding up the affairs of joint stock companies unable to meet their pecuniary engagements, and also the Joint Stock Companies Winding-up Acts, 1848 and 1849. (*n*)
20 & 21 Vict. c. 80	An Act to amend the Joint Stock Companies Act, 1856. (*o*)
21 & 22 Vict. c. 60 .	An Act to amend the Joint Stock Companies Acts, 1856 and 1857, and the Joint Stock Banking Companies Act, 1857. (*p*)
21 & 22 Vict. c. 91 .	An Act to enable joint stock banking companies to be formed on the principle of limited liability. (*q*)

NOTE.

Acts not incorporated in Companies Act 1862

Of the above Acts, the following may be disposed of at once as not being incorporated in the Act of 1862 :—

First. The Irish Act, (*a*) which was passed for the purpose of allowing limited partnerships to be formed in Ireland, and has never been practically of any use.

Secondly. The Joint Stock Companies Act, 1844, (*b*) and its amending Act, 10 & 11 Vict. c. 78. (*h*)

These Acts (*b* and *h*), except in so far as relates to insurance companies, were repealed by the Joint Stock Companies Act, 1856 (*i*) as amended by 20 & 21 Vict. c. 80. (*o*) A total repeal is now necessary, as insurance companies are included in the Act.

Thirdly. The Act for making Companies bankrupt in England, (*c*) and a similar Act for making Companies bankrupt in Ireland. (*e*)

These Acts have been practically useless, for the simple reason that they applied to companies the law of bankruptcy, without making any provision for the apportionment of contributions amongst the members.

Fourthly. The original Banking Act of 1844 (*d*) applying to England, and the similar Act of 1846 (*g*) applying to Scotland and Ireland.

These Acts have expired by virtue of the Banking Act of 1857. (*m*)

Fifthly. Lord Dalhousie's Act, (*f*) providing for the Dissolution of certain Railway Companies.

Acts incorporated in Companies Act 1862.

The remaining Acts are either wholly or partially consolidated in the present Act. Of thes Acts the most material is the Joint Stock Companies Act, 1856, (*k*) which forms the foundation of the present Act. This Act was amended in 1857 by the Joint Stock Companies Act, 1857, (*l*) for the purpose principally of facilitating the winding-up of companies, and the registration of new companies, and by the Joint Stock Companies Banking Act, (*m*) for the purpose of including banking companies; and by the Act of 20 and 21 Vict. c. 80, (*o*) for the purpose of setting at rest a doubt that had been raised with respect to insurance companies, and showing plainly that such companies still remained subject to the Act of 1844.

The Act of 1856 (*k*) was again amended in 1858 by 21 & 22 Vict. c. 60, (*p*) for the purpose of imposing on the courts imperatively the duty of carrying into effect the general power conferred by the 19th section of the Act of 1857.

The Act of 21 & 22 Vict. c. 91 (*q*) was passed in 1858, for the purpose of enabling banking companies to acquire limited liability; a privilege which was denied to them in 1857, at the time of the passing of the Joint Stock Banking Companies Act, 1857. (*m*)

There remain only to be noticed the Winding-up Acts of 1848

and 1849 (*i* and *j*) as amended by 20 & 21 Vict. c. 78, (*n*) in 1858.

These Winding-up Acts are superseded by the provisions of the Act which extend to *all* companies the process of winding-up established by the Act of 1856; but a variety of provisions, taken from the last mentioned Acts, will be found incorporated in the Act of 1862.

SECOND PART.

7 & 8 Vict. c. 113, s. 47.

Existing companies to have the powers of suing and being sued.

Every company of more than six persons established on the sixth day of May, one thousand eight hundred and forty-four, for the purpose of carrying on the trade or business of bankers within the distance of sixty-five miles from London, and not within the provisions of the Act passed in the session holden in the seventh and eighth years of the reign of Her present Majesty, chapter one hundred and thirteen, shall have the same powers and privileges of suing and being sued in the name of any one of the public officers of such co-partnership as the nominal plaintiff, petitioner, or defendant on behalf of such co-partnership; and all judgments decrees and orders made and obtained in any such suit may be enforced in like manner as is provided with respect to such companies carrying on the said trade or business at any place in England exceeding the distance of sixty-five miles from London, under the provisions of an Act passed in the seventh year of King George the Fourth, chapter forty-six,

intituled "An Act for the better regulating co-partnerships of certain bankers in England, and for amending so much of an Act of the thirty-ninth and fortieth years of the reign of His late Majesty, King George the Third, intituled 'An Act for establishing an agreement with the Governor and Company of the Bank of England for advancing the sum of three millions towards the supply for the service of the year one thousand eight hundred,' as relates to the same," provided that such first-mentioned company shall make out and deliver from time to time to the Commissioners of Stamps and Taxes the several accounts or returns required by the last-mentioned Act, and all the provisions of the last recited Act as to such accounts or returns shall be taken to apply to the accounts or returns so made out and delivered by such first-mentioned companies as if they had been originally included in the provisions of the last-recited Act.

This provision continues to banks of deposit, consisting of more than six partners, and established before the year 1844, within sixty-five miles of London, the privilege of suing and being sued in the name of their public officer, conferred by 7 & 8 Vict. c. 113, s. 47.

20 & 21 Vict. c. 49, Part of Section XII.

Power to form banking partnerships of ten persons.

Notwithstanding anything contained in any Act passed in the session holden in the seventh and eighth years of the reign of Her present Majesty, chapter one hundred and thirteen, and intituled "An Act to regulate joint stock banks in England," or in any other Act, it shall

be lawful for any number of persons not exceeding ten, to carry on in partnership the business of banking in the same manner and upon the same conditions in all respects as any company of not more than six persons could before the passing of this Act have carried on such business.

It may be doubted whether this provision enables a country bank of issue to increase its partners beyond the number of six, and yet retain its issue, in spite of 7 & 8 Vict. c. 32.

30 & 31 VICT.—CAP. CXXXI.

An Act to amend "The Companies Act, 1862."

[20th August, 1867.]

BE it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Preliminary.

I. This Act may be cited for all purposes as "The Companies Act 1867."

Short title

II. The Companies Act, 1862, is hereinafter referred to as "the Principal Act," and the principal Act and this Act are hereinafter distinguished as and may be cited for all purposes as "The Companies Acts, 1862 and 1867"; and this Act shall, so far as is consistent with the tenor thereof, be construed as one with the principal Act; and the expression "this Act" in the

Act to be construed as one with 25 & 26 Vict c 89.

principal Act, and any expression referring to the principal Act, which occurs in any Act or other document, shall be construed to mean the principal Act as amended by this Act.

Commencement of Act

III. This Act shall come into force on the first day of September, one thousand eight hundred and sixty-seven, which date is hereinafter referred to as the commencement of this Act.

Unlimited Liability of Directors.

Company may have directors with unlimited liability

IV. Where after the commencement of this Act a company is formed as a limited company under the principal Act, the liability of the directors or managers of such company, or the managing director may, if so provided by the memorandum of association, be unlimited.

See p. 211.

Liability of director, past and present, where liability is unlimited

V. The following modifications shall be made in the thirty-eighth section of the principal Act, with respect to the contributions to be required in the event of the winding-up of a limited company under the principal Act, from any director or manager whose liability is, in pursuance of the Act, unlimited:

(1.) Subject to the provisions hereinafter contained, any such director or manager, whether past or

present, shall, in addition to his liability (if any) to contribute as an ordinary member, be liable to contribute as if he were at the date of the commencement of such winding-up a member of an unlimited company:

(2.) No contribution required from any past director or manager who has ceased to hold such office for a period of one year or upwards prior to the commencement of the winding-up shall exceed the amount (if any) which he is liable to contribute as an ordinary member of the company:

(3.) No contribution required from any past director or manager in respect of any debt or liability of the company contracted after the time at which he ceased to hold such office shall exceed the amount (if any) which he is liable to contribute as an ordinary member of the company:

(4.) Subject to the provisions contained in the regulations of the company no contribution required from any director or manager shall exceed the amount (if any) which he is liable to contribute as an ordinary member, unless the court deem it necessary to require such contribution in order to satisfy the debts and liabilities of the company, and the costs charges and expenses of the winding-up.

See p. 212.

Director with unlimited liability may have set-off as under s 101 of 25 & 26 Vict c 89.

VI. In the event of the winding-up of any limited company, the court, if it think fit, may make to any director or manager of such company, whose liability is unlimited, the same allowance by way of set-off as under the one hundred and first section of the principal Act it may make to a contributory where the company is not limited.

See note to s. 101 of Act of 1862.

Notice to be given to director on his election that his liability will be unlimited

VII. In any limited company in which, in pursuance of this Act, the liability of a director or manager is unlimited, the directors or managers of the company (if any), and the member who proposes any person for election or appointment to such office, shall add to such proposal a statement that the liability of the person holding such office will be unlimited, and the promoters directors managers and secretary (if any) of such company, or one of them, shall before such person accepts such office or acts therein, give him notice in writing that his liability will be unlimited.

If any director manager or proposer make default in adding such statement, or if any promoter director manager or secretary make default in giving such notice, he shall be liable to a penalty not exceeding one hundred pounds, and shall also be liable for any damage which the person so elected or appointed may sustain from such default, but the liability of the person elected or appointed shall not be affected by such default.

See p. 213.

The proposal of a candidate for election is usually made verbally, at a general meeting. It seems difficult to understand how the directors and managers are to add to the proposal the statement in question. Moreover, the section strictly interpreted would seem to require *all* the directors and managers, whether present or not at the meeting, to perform that duty.

Considering the language of this section and the extreme severity of the penalty, involving 100*l.*, and unlimited liability, members of companies can scarcely be advised to undertake the task of proposing, or assisting in proposing, a director with unlimited liability.

Existing limited company may by special resolution make liability of directors unlimited.

VIII. Any limited company under the principal Act, whether formed before or after the commencement of this Act, may, by a special resolution, if authorized to do so by its regulations as originally framed or as altered by special resolution, from time to time modify the conditions contained in its memorandum of association so far as to render unlimited the liability of its directors or managers, or of the managing director; and such special resolution shall be of the same validity as if it had been originally contained in the memorandum of association, and a copy thereof shall be embodied in or annexed to every copy of the memorandum of association which is issued after the passing of the resolution, and any default in this respect shall be deemed to be a default in complying with the provisions of the fifty-fourth section of the principal Act, and shall be punished accordingly.

Reduction of Capital and Shares.

Power to company to reduce capital.

IX. Any company limited by shares may, by special resolution, so far modify the conditions contained in its memorandum of association, if authorized so to do by its regulations as originally framed or as altered by special resolution, as to reduce its capital; but no such resolution for reducing the capital of any company shall come into operation until an order of the court is registered by the registrar of joint stock companies, as is hereinafter mentioned.

See p. 214.

It is observable that this section only authorizes the company "to reduce its capital." The more important power of altering the amount of its shares is given by inference, in s. 15.

"May *by special resolution* modify." The words in Italics are not found in the corresponding part of s. 12 of the Act of 1862. See note there, and *West India Steamship Company*, 9 Ch. 11 n.

Company to add "and reduced" to its name for a limited period.

X. The company shall, after the date of the passing of any special resolution for reducing its capital, add to its name, until such date as the court may fix, the words "and reduced," as the last words in its name, and those words shall, until such date, be deemed to be part of the name of the company within the meaning of the principal Act.

For penalties imposed on disobedience of this section see ss. 41 and 42 of the Act of 1862.

Three months from the date of the order of the court

confirming the reduction is a proper period for the continuance of the use of the words "and reduced." *Re Sharp, Stewart and Co.*, 5 Eq. 155. *Estate Co.*, 5 Ch. 407; but a fortnight was considered sufficient in *Telegraph Construction Co.*, 10 Eq. 384; and in *Credit Foncier of England*, 11 Eq 356, the words having been added before the order.

Company to apply to the court for an order confirming reduction

XI. A company which has passed a special resolution for reducing its capital, may apply to the court by petition for an order confirming the reduction, and on the hearing of the petition, the court, if satisfied that with respect to every creditor of the company who, under the provisions of this Act, is entitled to object to the reduction, either his consent to the reduction has been obtained, or his debt or claim has been discharged or has determined, or has been secured as hereinafter provided, may make an order confirming the reduction on such terms and subject to such conditions as it deems fit.

Proceedings in respect of petition, rules of 1868, rules 2—20, in part II. of this App.

Definition the Court

XII. The expression "the court" shall, in this Act, mean the court which has jurisdiction to make an order for winding up the petitioning company, and the eighty-first and eighty-third sections of the principal Act shall be construed as if the term "winding-up" in those sections included proceedings under this Act, and the court may, in any proceedings under this Act, make such order as to costs as it deems fit.

See s. 81 of Act of 1862.

Creditors may object to reduction, and list of objecting creditors to be settled by the court.

XIII. Where a company proposes to reduce its capital, every creditor of the company who, at the date fixed by the court, is entitled to any debt or claim which, if that date were the commencement of the winding-up of the company, would be admissible in proof against the company, shall be entitled to object to the proposed reduction, and to be entered in the list of creditors who are so entitled to object.

The court shall settle a list of such creditors, and for that purpose shall ascertain as far as possible, without requiring an application from any creditor, the names of such creditors and the nature and amount of their debts or claims, and may publish notices fixing a certain day or days within which creditors of the company who are not entered on the list are to claim to be so entered or to be excluded from the right of objecting to the proposed reduction.

The absence of debenture holders whose names were unknown to the company, and who had not objected under this section, held not to be a ground for refusing to make an order. *Credit Foncier of England*, 11 Eq. 356.

Court may dispense with consent of creditor on security being given for his debt.

XIV. Where a creditor whose name is entered on the list of creditors, and whose debt or claim is not discharged or determined, does not consent to the proposed reduction, the court may (if it think fit) dispense with such consent on the company securing the payment of the debt or claim of such creditor by setting apart and appropriating in such manner as the court may direct, a sum of such amount as is hereinafter mentioned; that is to say,

(1.) If the full amount of the debt or claim of the creditor is admitted by the company, or, though not admitted, is such as the company are willing to set apart and appropriate, then the full amount of the debt or claim shall be set apart and appropriated.

(2.) If the full amount of the debt or claim of the creditor is not admitted by the company, and is not such as the company are willing to set apart and appropriate, or if the amount is contingent or not ascertained, then the court may, if it think fit, inquire into and adjudicate upon the validity of such debt or claim, and the amount for which the company may be liable in respect thereof, in the same manner as if the company were being wound up by the court, and the amount fixed by the court on such inquiry and adjudication shall be set apart and appropriated.

Telegraph Construction Co., 10 Eq. 384; *Credit Foncier of England*, 11 Eq. 356; and see note to s. 158 of the Act of 1862.

Order and minute to be registered.

XV. The registrar of joint stock companies, upon the production to him of an order of the court confirming the reduction of the capital of a company, and the delivery to him of a copy of the order and of a minute (approved by the court), showing with respect to the capital of the company, as altered by the order, the amount of such capital, the number of shares in which it is to be divided, and the amount of each share,

shall register the order and minute, and, on the registration the special resolution confirmed by the order so registered shall take effect.

Notice of such registration shall be published in such manner as the court may direct.

The registrar shall certify under his hand the registration of the order and minute, and his certificate shall be conclusive evidence that all the requisitions of this Act with respect to the reduction of capital have been complied with, and that the capital of the company is such as is stated in the minute.

Form of order and minute. *Credit Foncier of England*, 11 Eq. 356.

Minute to form part of memorandum of association.

XVI. The minute, when registered, shall be deemed to be substituted for the corresponding part of the memorandum of association of the company, and shall be of the same validity, and subject to the same alterations, as if it had been originally contained in the memorandum of association; and, subject as in this Act mentioned, no member of the company, whether past or present, shall be liable in respect of any share to any call or contribution exceeding in amount the difference (if any) between the amount which has been paid on such share and the amount of the share as fixed by the minute.

Saving of rights of creditors who are ignorant of proceedings.

XVII. If any creditor who is entitled in respect of any debt or claim to object to the reduction of the capital of a company under this Act is, in consequence of his ignorance of the proceedings taken with a view

to such reduction, or of their nature and effect with respect to his claim, not entered on the list of creditors, and after such reduction the company is unable, within the meaning of the eightieth section of the principal Act, to pay to the creditor the amount of such debt or claim, every person who was a member of the company at the date of the registration of the order and minute relating to the reduction of the capital of the company, shall be liable to contribute for the payment of such debt or claim an amount not exceeding the amount which he would have been liable to contribute if the company had commenced to be wound up on the day prior to such registration, and on the company being wound up, the court, on the application of such creditor, and on proof that he was ignorant of the proceedings taken with a view to the reduction, or of their nature and effect with respect to his claim, may, if it think fit, settle a list of such contributories accordingly, and make and enforce calls and orders on the contributories settled on such list in the same manner in all respects as if they were ordinary contributories in a winding-up; but the provisions of this section shall not affect the rights of the contributories of the company among themselves.

Copy of registered minute.

XVIII. A minute, when registered, shall be embodied in every copy of the memorandum of association issued after its registration; and if any company makes default in complying with the provisions of this section, it shall incur a penalty not exceeding one pound for each copy in respect of which such default is made, and every director and manager of the company who

shall knowingly and wilfully authorize or permit such default shall incur the like penalty.

Penalty on concealment of name of creditor

XIX. If any director manager or officer of the company wilfully conceals the name of any creditor of the company who is entitled to object to the proposed reduction, or wilfully misrepresents the nature or amount of the debt or claim of any creditor of the company, or if any director or manager of the company aids or abets in or is privy to any such concealment or misrepresentation as aforesaid, every such director manager or officer shall be guilty of a misdemeanour.

Power to make rules extended to making rules concerning matters in this Act.

XX. The powers of making rules concerning winding-up conferred by the one hundred and seventieth, one hundred and seventy-first, one hundred and seventy-second, and one hundred and seventy-third sections of the principal Act, shall respectively extend to making rules concerning matters in which jurisdiction is by this Act given to the court which has the power of making an order to wind up a company, and until such rules are made, the practice of the court in matters of the same nature, shall, so far as the same is applicable, be followed.

See the rules of March, 1868, in part II. of this Appendix.

Subdivision of Shares.

Shares may be divided into shares of smaller amount

XXI. Any company limited by shares may, by special resolution, so far modify the conditions contained in its memorandum of association, if authorized so to do by its regulations as originally framed or as altered by special resolution, as by subdivision of its existing

shares or any of them, to divide its capital, or any part thereof, into shares of smaller amount than is fixed by its memorandum of association.

Provided, that in the subdivision of the existing shares the proportion between the amount which is paid and the amount (if any) which is unpaid on each share of reduced amount shall be the same as it was in the case of the existing share or shares from which the share of reduced amount is derived.

See p. 217; and notes to s. 9 of this Act, and to s. 12 of the Act of 1862.

Special resolution to be embodied in memorandum of association.

XXII. The statement of the number and amount of the shares into which the capital of the company is divided, contained in every copy of the memorandum of association issued after the passing of any such special resolution, shall be in accordance with such resolution: and any company which makes default in complying with the provisions of this section shall incur a penalty not exceeding one pound for each copy in respect of which such default is made; and every director and manager of the company who knowingly or wilfully authorizes or permits such default shall incur the like penalty.

Associations not for Profit.

Special provisions as to associations formed for purposes not of gain.

XXIII. Where any association is about to be formed under the principal Act as a limited company, if it proves to the Board of Trade that it is formed for the purpose of promoting commerce, art, science, religion, charity, or any other useful object, and that it is the intention of such association to apply the profits, if any,

or other income of the association, in promoting its objects, and to prohibit the payment of any dividend to the members of the association, the Board of Trade may by licence, under the hand of one of the secretaries or assistant secretaries, direct such association to be registered with limited liability, without the addition of the word limited to its name, and such association may be registered accordingly, and upon registration shall enjoy all the privileges and be subject to the obligations by this Act imposed on limited companies, with the exceptions that none of the provisions of this Act that require a limited company to use the word limited as any part of its name, or to publish its name, or to send a list of its members, directors, or managers to the registrar, shall apply to an association so registered.

The licence by the Board of Trade may be granted upon such conditions and subject to such regulations as the Board think fit to impose, and such conditions and regulations shall be binding on the association, and may, at the option of the said Board, be inserted in the memorandum and articles of association, or in both or one of such documents.

See p. 218; ss. 8, 9, 25, 26, 41, 42, 45, 46 of Act of 1862.

Calls upon Shares.

Company may have some shares fully paid, and others not.

XXIV. Nothing contained in the principal Act shall be deemed to prevent any company under that Act, if authorized by its regulations as originally framed or as altered by special resolution, from doing any one or more of the following, things; namely,—

(1.) Making arrangements on the issue of shares for a difference between the holders of such shares in the amount of calls to be paid, and in the time of payment of such calls :

(2.) Accepting from any member of the company who assents thereto the whole or a part of the amount remaining unpaid on any share or shares held by him, either in discharge of the amount of a call payable in respect of any other share or shares held by him or without any call having been made :

(3.) Paying dividend in proportion to the amount paid up on each share in cases where a larger amount is paid up on some shares than on others.

See p. 219.

Manner in which shares are to be issued and held

XXV. Every share in any company shall be deemed and taken to have been issued and to be held subject to the payment of the whole amount thereof in cash, unless the same shall have been otherwise determined by a contract duly made in writing, and filed with the registrar of joint stock companies at or before the issue of such shares.

Previously to the passing of this Act it had been held that shares might be paid for in money's worth as well as in money; and there was no legal obstacle to the payment of vendors, contractors, and other persons dealing with newly-formed companies, by the allotment to them of fully paid-up shares. To meet certain dangers and abuses arising out of wholesale issues of shares to which no liability

attached, this section enacts that every share must be paid for in cash, unless it is otherwise determined by a written contract filed with the registrar of joint-stock companies.

Anything which would support a plea of payment at law is a payment in cash within the meaning of the section, and actual money need not be handed backwards and forwards. *Fothergill's case*, 8 Ch. 270; *Spargo's case*, ib., 407; *Coates' case*, 17 Eq. 169; *Ferrao's case*, 9 Ch. 355. *Qu.* if *Cleland's case*, 14 Eq. 387, is entirely consistent with the above.

With respect to what amounts to registration of the contract, the judgments of V. C Wickens and L J Mellish in *Pritchard's case* (8 Ch. 956,), seem to go this length—that it is not sufficient for the contract to be contained in registered articles of association, but that a separate contract must be filed in order to comply with the section. In *Appletreewick Mining Co.*, 18 Eq. 95, however, where the owners of a costbook mine formed themselves into a limited company, and signed the memorandum for the full number of 10*l.* shares into which the capital of the company was to be divided, in proportion to their respective interests in the mine, and by one of the articles of association it was agreed that 7*l.* should be credited on each 10*l.* share, and that all their interests should vest in the company—V.-C Malins held that this was a duly registered contract within this section.

Where fully paid-up shares had been issued in pursuance of an unregistered contract to persons ignorant of the omission to register, the Court on an application by petition under s. 35 of the Act of 1862 to which the company consented, ordered the names of the holders to be removed from the register and fresh shares to be issued to them after registration of the contract *Denton Colliery Co*, 18 Eq. 76. In *New Zealand Kapanga Mining Co.*, *ib.*, *n.*, p. 17, a similar order was made on motion; and in *Hartley's case*, 18 Eq. 542, (affirmed 10 Ch. 157,) on summons.

Transfer of Shares.

XXVI. A company shall, on the application of the transferor of any share or interest in the company, enter in its register of members the name of the transferee of such share or interest, in the same manner and subject to the same conditions as if the application for such entry were made by the transferee.

Transfer may be registered at request of transferor

See p. 220.

Share Warrants to Bearer.

XXVII. In the case of a company limited by shares the company, if authorized so to do by its regulations as originally framed or as altered by special resolution, and subject to the provisions of such regulations, may, with respect to any share which is fully paid up, or with respect to stock, issue under their common seal a warrant stating that the bearer of the warrant is entitled to the share or shares or stock therein specified, and may provide, by coupons or otherwise, for the payment of the future dividends, or the share or shares or stock included in such warrant, hereinafter referred to as a share warrant.

Warrant of limited shares fully paid up may be issued in name of bearer

See p. 220, and the miscellaneous forms in Appendix II.

XXVIII. A share warrant shall entitle the bearer of such warrant to the shares or stock specified in it, and such shares or stock may be transferred by the delivery of the share warrant.

Effect of share warrant

Re-registration of bearer of a share warrant in the register.

XXIX. The bearer of a share warrant shall, subject to the regulations of the company, be entitled, on surrendering such warrant for cancellation, to have his name entered as a member in the register of members, and the company shall be responsible for any loss incurred by any person by reason of the company entering in its register of members the name of any bearer of a share warrant in respect of the shares or stock specified therein without the share warrant being surrendered and cancelled.

Regulations of the company may make the bearer of a share warrant a member

XXX. The bearer of a share warrant may, if the regulations of the company so provide, be deemed to be a member of the company within the meaning of the principal Act, either to the full extent or for such purposes as may be prescribed by the regulations:

Provided that the bearer of a share warrant shall not be qualified in respect of the shares or stock specified in such warrant for being a director or manager of the company in cases where such a qualification is prescribed by the regulations of the company.

Entries in register where share warrant issued.

XXXI. On the issue of a share warrant in respect of any share or stock the company shall strike out of its register of members the name of the member then entered therein as holding such share or stock as if he had ceased to be a member, and shall enter in the register the following particulars:

(1.) The fact of the issue of the warrant:

(2.) A statement of the shares or stock included in the warrant, distinguishing each share by its number:

(3.) The date of the issue of the warrant:

And until the warrant is surrendered, the above particulars shall be deemed to be the particulars which are required by the twenty-fifth section of the principal Act to be entered in the register of members of a company; and on the surrender of a warrant the date of such surrender shall be entered as if it were the date at which a person ceased to be a member.

Particulars to be contained in annual summary.

XXXII. After the issue by the company of a share warrant the annual summary required by the twenty-sixth section of the principal Act shall contain the following particulars,—the total amount of shares or stock for which share warrants are outstanding at the date of the summary, and the total amount of share warrants which have been issued and surrendered respectively since the last summary was made, and the number of shares or amount of stock comprised in each warrant.

Stamps on share warrants.

XXXIII. There shall be charged on every share warrant a stamp duty of an amount equal to three times the amount of the *ad valorem* stamp duty which would be chargeable on a deed transferring the share or shares or stock specified in the warrant, if the consideration for the transfer were the nominal value of such share or shares or stock.

By s. 127 of the Stamp Act, 1870, if a share warrant is issued without being duly stamped the company issuing the same, and also every person who at the time when it is issued is the managing director, or secretary, or other principal officer of the company, shall forfeit the sum of fifty pounds.

Penalties on persons.

XXXIV. Whosoever forges or alters or offers utters

committing forgery

disposes of or puts off, knowing the same to be forged or altered, any share warrant or coupon, or any document purporting to be a share warrant or coupon, issued in pursuance of this Act, or demands or endeavours to obtain or receive any share or interest of or in any company under the principal Act, or to receive any dividend or money payable in respect thereof by virtue of any such forged or altered share warrant, coupon, or document, purporting as aforesaid, knowing the same to be forged or altered, with intent in any of the cases aforesaid to defraud, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for life or for any term not less than five years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

Penalties on persons falsely personating owner of shares

XXXV. Whosoever falsely and deceitfully personates any owner of any share or interest of or in any company, or of any share warrant or coupon issued in pursuance of this Act, and thereby obtains or endeavours to obtain any such share or interest, or share warrant or coupon, or receives or endeavours to receive any money due to any such owner, as if such offender were the true and lawful owner, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for life or for any term not less than five years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement

XXXVI. Whosoever, without lawful authority or excuse, the proof whereof shall be on the party accused, engraves or makes upon any plate, wood, stone, or other material, any share warrant or coupon purporting to be a share warrant or coupon issued or made by any particular company under and in pursuance of this Act, or to be a blank share warrant or coupon issued or made as aforesaid, or to be a part of such share warrant or coupon, or uses any such plate, wood, stone, or other material for the making or printing any such share warrant or coupon, or any such blank share warrant or coupon, or any part thereof respectively, or knowingly has in his custody or possession any such plate, wood, stone, or other material, shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding fourteen years and not less than five years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement. Penalties on persons engraving plates, &c.

Contracts.

XXXVII. Contracts on behalf of any company under the principal Act may be made as follows, that is to say— Contracts how made.

(1.) Any contract which, if made between private persons, would be by law required to be in writing, and if made according to English law to be under seal, may be made on behalf of the company in writing under the common seal of

the company, and such contract may be in the same manner varied or discharged:

(2.) Any contract which, if made between private persons, would be by law required to be in writing, and signed by the parties to be charged therewith, may be made on behalf of the company in writing signed by any person acting under the express or implied authority of the company, and such contract may in the same manner be varied or discharged:

(3.) Any contract which, if made between private persons, would by law be valid although made by parol only, and not reduced into writing, may be made by parol on behalf of the company by any person acting under the express or implied authority of the company, and such contract may in the same way be varied or discharged:

And all contracts made according to the provisions herein contained shall be effectual in law, and shall be binding upon the company and their successors and all other parties thereto, their heirs, executors, or administrators as the case may be.

See p. 123.

Paragraph 1 merely expresses the existing law.

Paragraph 2 provides that the signature of an agent of the company to a contract shall bind the company, in cases in which the signature of an individual would bind that individual.

Paragraph 3 declares that any parol contract, which would be valid in law between private persons, may be made on behalf of the company by its agents.

XXXVIII. Every prospectus of a company, and every notice inviting persons to subscribe for shares in any joint stock company, shall specify the dates and the names of the parties to any contract entered into by the company, or the promoters, directors, or trustees thereof, before the issue of such prospectus or notice, whether subject to adoption by the directors or the company, or otherwise; and any prospectus or notice not specifying the same shall be deemed fraudulent on the part of the promoters, directors, and officers of the company knowingly issuing the same, as regards any person taking shares in the company on the faith of such prospectus, unless he shall have had notice of such contract.

Prospectus, &c., to specify dates and names of parties to any contract made prior to issue of such prospectus, &c.

See p. 221.

The width of the language of this section is calculated to alarm those concerned in the formation or management of companies. The Courts have, however, decided that it is applicable only for the protection of shareholders (and not, *e.g.*, of bondholders); and, *per* Honyman, J., it amounts simply to a declaration that, as between shareholders and the persons issuing a prospectus not revealing a certain class of contracts, such prospectus shall be deemed fraudulent.

A question remains as to the meaning of "fraudulent," and as to the description of contracts intended by the section. *Cornell* v. *Hay*, L. R., 8 C. P. 328.

Meetings.

XXXIX. Every company formed under the principal Act, after the commencement of this Act, shall hold a general meeting within four months after its memoran-

Company to hold meeting within four

months after registration.

dum of association is registered; and if such meeting is not held, the company shall be liable to a penalty not exceeding five pounds a day for every day after the expiration of such four months, until the meeting is held; and every director or manager of the company, and every subscriber of the memorandum of association, who knowingly authorizes or permits such default, shall be liable to the same penalty.

Holding an extraordinary general meeting within the four months is a compliance with this section. *Lord Claud Hamilton's case*, 8 Ch. 548.

See p. 222.

Winding-up.

Contributory when not qualified to present winding-up petition

XL. No contributory of a company under the principal Act shall be capable of presenting a petition for winding up such company unless the members of the company are reduced in number to less than seven, or unless the shares in respect of which he is a contributory, or some of them, either were originally allotted to him, or have been held by him, and registered in his name, for a period of at least six months during the eighteen months previously to the commencement of the winding-up, or have devolved upon him through the death of a former holder:

Provided that where a share has during the whole or any part of the six months been held by or registered in the name of the wife of a contributory either before or after her marriage, or by or in the name of any trustee or trustees for such wife, or for the con-

tributory, such share shall, for the purposes of this section, be deemed to have been held by and registered in the name of the contributory.

See p. 223.

Winding-up may be referred to county court.

XLI. Where the High Court of Chancery in *England* makes an order for winding-up a company under the principal Act, it may, if it thinks fit, direct all subsequent proceedings to be had in a county court held under an Act of the Session of the ninth and tenth years of the reign of her present Majesty, chapter ninety-five, and the Acts amending the same; and thereupon such county court shall, for the purpose of winding-up the company, be deemed to be "the court" within the meaning of the principal Act, and shall have, for the purposes of such winding-up, all the jurisdiction and powers of the High Court of Chancery.

See p. 223.

Application may be made at chambers for a reference of the winding-up to the county court. *London and Westminster Co-operative Store Company*, 17 L. T. (N. S.) 559.

As to transfer of suit from one county court to another.

XLII. If during the progress of a winding-up it is made to appear to the High Court of Chancery that the same could be more conveniently prosecuted in any other county court, it shall be competent for the High Court of Chancery to transfer the same to such other county court, and thereupon the winding-up shall proceed in such other county court.

Parties aggrieved

XLIII. If any party in a winding-up under this

may appeal.

Act is dissatisfied with the determination or direction of a judge of a county court on any matter in such winding-up, such party may appeal from the same to the Vice-Chancellor named for that purpose by the Lord Chancellor by general order: Provided that such party shall, within thirty days after such determination or direction, give notice of such appeal to the other party, or his attorney, and also deposit with the registrar of the county court the sum of ten pounds as security for the costs of the appeal; and the said court of appeal may make such final or other decree or order as it thinks fit, and may also make such order with respect to the costs of the said appeal as such court may think proper, and such orders shall be final.

Powers to frame rules and orders under s. 32 of 19 & 20 Vict. c. 108.

XLIV. The county court judges appointed or to be appointed by the Lord Chancellor from time to time to frame rules and orders for regulating the practice of the courts, and forms of proceedings therein, under the thirty second section of an Act passed in the nineteenth and twentieth years of the reign of her present Majesty, chapter one hundred and eight, shall frame the rules and orders for regulating the practice of the county courts under this Act, and forms of proceedings therein, and from time to time may amend such rules, orders, and forms, and such rules, orders and forms, or amended rules, orders, and forms, certified under the hands of such judges, or of any three or more of them, shall be submitted to the Lord Chancellor, who may allow or disallow, or alter the same, and so from time to time; and the rules, orders, and forms, or amended rules, orders, and forms so allowed or altered, shall,

from a day to be named by the Lord Chancellor, be in force in every county court.

See part II. of this App., *ad fin.*

Scale o costs to be framed by the Judges.

XLV. The county court judges mentioned in the last section shall be empowered to frame a scale of costs and charges to be paid to counsel and attorneys with respect to all proceedings in a winding-up under this Act, and from time to time to amend such scale; and such scale or amended scale, certified under the hands of such judges, or any three or more of them, shall be submitted to the Lord Chancellor, who from time to time may allow, or disallow, or alter the same, and the scale or amended scale so allowed or altered shall, from a day to be named by the Lord Chancellor, be in force in every county court.

See part II. of this App., *ad fin.*

Remuneration of registrars and high bailiffs in winding up of companies.

XLVI The registrars and high bailiffs of the county courts shall be remunerated for the duties to be performed by them under this Act, by receiving, for their own use, such fees as may be from time authorized to be taken by any orders to be made by the Commissioners of the Treasury, with the consent of the Lord Chancellor; and the Commissioners of the Treasury are hereby authorized and empowered, with such consent as aforesaid, from time to time to make such orders: Provided that it shall be lawful for the said commissioners, with the like consent as aforesaid, by an order to direct that after the date named in the order any registrar or high bailiff shall, in lieu of

receiving such fees, be paid such fixed or fluctuating allowance as may in each case be thought just, and after such date the said fees shall be accounted for and paid over by such registrar or high bailiff in such manner as may be directed in the order.

See part II. of this App., *ad fin.*

Saving.

Not to exempt companies from provisions of s. 196 of 25 & 26 Vict. c. 89

XLVII. Nothing in this Act contained shall exempt any company from the second or third provisions of the one hundred and ninety-sixth section of the principal Act restraining the alteration of any provision in any Act of Parliament or charter.

JOINT STOCK COMPANIES ARRANGEMENT ACT, 1870, 33 & 34 Vict. c. 104.

An Act to facilitate compromises and arrangements between creditors and shareholders of Joint Stock and other Companies in Liquidation.

[10th August, 1870.]

WHEREAS it is expedient to amend the law relating to the liquidation of joint stock and other companies:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as "The Joint Stock Companies Arrangement Act, 1870." Short title.

2. Where any compromise or arrangement shall be proposed between a company which is, at the time of the passing of this Act or afterwards, in the course of being wound up, either voluntarily or by or under the supervision of the court, under the Companies Acts, 1862 and 1867, or either of them, and the creditors of such company, or any class of such creditors, it shall be lawful for the court, in addition to any other of its powers, on the application in a summary way of any creditor or the liquidator, to order that a meeting of such creditors or class of creditors shall be summoned in such manner as the court shall direct, and if a

Where compromise proposed Court of Chancery may order a meeting of creditors, &c., to decide as to such compromise.

majority in number representing three-fourths in value of such creditors or class of creditors present either in person or by proxy at such meeting shall agree to any arrangement or compromise, such arrangement or compromise shall, if sanctioned by an order of the court, be binding on all such creditors or class of creditors, as the case may be, and also on the liquidator and contributories of the said company.

In the case of a life assurance company which has absorbed a number of other companies, the court has no data on which it can estimate the amounts of the claims of the individual creditors of the respective companies, so as to ascertain the statutory majority, and the Act consequently cannot be applied. *Albert Life Assurance Co.*, 6 Ch. 381.

Interpretation

3. The word "company" in this Act shall mean any company liable to be wound up under "The Companies Act, 1862."

Act and Companies Act to be read together

4. This Act shall be read and construed as part of "The Companies Act, 1862."

PART II.

ORDERS AND RULES IN CHANCERY.

GENERAL ORDER AND RULES OF THE HIGH COURT OF CHANCERY TO REGULATE THE MODE OF PROCEEDING UNDER THE COMPANIES ACT, 1862.

11TH NOVEMBER, 1862.

Petition to Wind up Company.

1. EVERY petition for the winding up of any company by the court, or subject to the supervision of the court, shall be intituled in the matter of "The Companies Act, 1862," and of the company to which such petition shall relate, describing the company by its most usual style or firm.

For form of petition see below.

Rule 1 of the Order of 1868 requires petitions, &c, to be intituled in the matter of the Companies Acts, 1862 and 1867; see note to that rule.

2. Every such petition shall be advertised seven clear days before the hearing, as follows:—

(1.) In the case of a company whose registered office, or if there shall be no such office, then whose principal, or last known principal place of business is or was situate within ten miles from Lincoln's Inn Hall, once in the *London Gazette*, and once at least in two London daily morning newspapers.

(2.) In the case of any other company, once in the *London Gazette*, and once at least in two local newspapers circulating in the district

where such registered office, or principal or last known place of business, as the case may be, of such company is or was situate.

The advertisement shall state the day on which the petition was presented, and the name and address of the petitioner, and of his solicitor and London agent (if any).

The seven days may be counted in the vacation; *London India Rubber Co*, 14 W. R. 594.

Hearing of petition which had not been advertised in time adjourned to enable the defect to be remedied; *Lond. and Westminster Wine Co.*, 1 H. & M. 561; 12 W. R. 44. Advertisement in a second newspaper enforced; *London India Rubber Co.*, 14 W. R. 594.

On motion t discharge (on ground of irregularity in the voluntary winding-up) a supervision order made on creditor's petition for a compulsory winding-up the order was discharged, and the petition reheard without fresh advertisement, on service and consent of all parties entitled to be served; *Patent Floor Cloth Co.*, 8 Eq. 664.

The advertisement is notice to all the world; *Emmerson's Case*, 2 Eq. 231; see note to s. 153.

See rule 53. Form of advertisement, form 1 in sched. III., to these rules.

3. Every such petition shall, unless presented by the company, be served at the registered office, if any, of the company, and if no registered office, then at the principal or last known principal place of business of the company, if any such can be found, upon any member, officer, or servant of the company there, or in case no such member, officer, or servant can be found there, then by being left at such registered office or principal place of business, or by being served on such member or members of the company as the court may direct; and every petition for the winding up of a company, subject to the supervision of the court, shall also be served upon the liquidator (if any) appointed for the purpose of winding up the affairs of the company.

Service directed on the chairman and general manager; *National Credit and Exchange Co.*, 11 W. R. 161. On any five directors, *Unity Assur. Assocn.* 11 W. R. 355; on solicitor and any one director; *Lond. and Westminster Wine Co.*, 12 W. R. 6. On subscribers of memorandum of association and three or four of the principal shareholders; *Inventors' Assocn.*, 13 W. R. 1015. Service on secretary and two directors held sufficient; *Fortune Copper Mining Co.*, 10 Eq. 390; and see *Manchester, &c., Assocn.*, 9 Eq. 643; *S. Essex Estuary, &c., Co.*, 18 L. T. (N. S.) 178.

4. Every petition for the winding up of any company by the court, or subject to the supervision of the court, shall be verified by an affidavit re-

ferring thereto, in the form or to the effect set forth in Form No. 2 in the third schedule thereto; such affidavit shall be made by the petitioner, or by one of the petitioners, if more than one, or, in case the petition is presented by the company, by some director, secretary, or other principal officer thereof; and shall be sworn after and filed within four days after the petition is presented, and such affidavit shall be sufficient *primâ facie* evidence of the statements in the petition.

Form 2 in sched. III.

In *Western Benefit Society*, 33 Beav. 368, the affidavit was filed before instead of after the presentation of the petition. On a statement of the facts the court allowed the affidavit to be resworn and filed, and the order, which had been made on the petition, to be dated subsequently.

Extension of time to file: *Patent Boot and Shoe Co.*, 32 Beav 142; and see *Kentish Hotel Co.*, 13 W. R. 448; *Anglo-Danish Navigation Co.*, 15 W. R. 10[illegible]; *Fortune Copper Mining Co.*, 10 Eq 390.

5. Every contributory or creditor of the company shall be entitled to be furnished, by the solicitor of the petitioner, with a copy of the petition, within twenty-four hours after requiring the same, on paying the rate of fourpence per folio of seventy-two words for such copy.

To publish in a newspaper a petition containing personal charges of fraud before the hearing is a contempt of court; *Cheltenham, &c., Ry. Carriage Co.*, 8 Eq. 580.

Order to wind up Company.

6. Every order for the winding up of a company by the court, or subject to its supervision, shall, within twelve days after the date thereof, be advertised by the petitioner once in the *London Gazette*, and shall be served upon such persons (if any) and in such manner as the court may direct.

Form 3 in sched. III.

Order allowed to be post-dated; *Doncaster Perm. Building Society*, 11 W. R. 479.

7. A copy of every order for winding up a company, certified to be a true copy thereof as passed and entered, shall be left by the petitioner at the chambers of the judge, within ten days after the same shall have been passed and entered, and in default thereof any other person interested in the winding up may leave the same, and the judge may, if he thinks fit, give

the carriage and prosecution of the order to such person. Upon such copy being left a summons shall be taken out to proceed with the winding up of the company, and be served upon all parties who may have appeared upon the hearing of the petition. Upon the return of such summons, a time shall, if the judge thinks fit, be fixed for the appointment of an official liquidator, and for the proof of debts, and for the list of contributories to be brought in, and directions may be given as to the advertisements to be issued for all or for any of such purposes, and generally as to the proceedings and the parties to attend thereon. The proceedings under the order shall be continued by adjournment, and, when necessary, by further summons, and any such direction as aforesaid may be given, added to, or varied, at any subsequent time, as may be found necessary.

Official Liquidator.

8. The judge may appoint a person to the office of official liquidator, without previous advertisement, or notice to any party, or fix a time and place for the appointment of an official liquidator, and may appoint or reject any person nominated at such time and place, and appoint any person not so nominated.

Commercial Discount Co., 32 Beav. 198.

9. When a time and place are fixed for the appointment of an official liquidator, such time and place shall be advertised in such manner as the judge shall direct, so that the first or only advertisement shall be published within fourteen days and not less than seven days before the day so fixed.

Forms 6, 7 in sched. III.

10. Every official liquidator shall give security by entering into a recognizance with two or more sufficient sureties, in such sum as the judge may approve; and the judge may, if he shall think fit, accept the security of any guarantee society established by charter or Act of Parliament in England, in lieu of the security of such sureties as aforesaid, or of any of them.

Forms 8—11 in sched. III

11. The official liquidator shall be appointed by order; and unless he

shall have given security, a time shall be fixed by such order within which he is to do so; and the order shall fix the times or periods at which the official liquidator is to leave his accounts of his receipts and payments at the judge's chambers, and shall direct that all moneys to be received shall be paid into the Bank of England, immediately after the receipt thereof, to the account of the official liquidator of the company, and an account shall be opened there accordingly; and an office copy of the order shall be lodged at the Bank of England.

Form 14 in sched. III.

12. When an official liquidator has given security pursuant to the directions in the order appointing him, the same shall be certified by the chief clerk, as in the case of a receiver appointed in a cause subject to giving security.

13. The official liquidator shall, on each occasion of passing his account, and also whensoever the judge may so require, satisfy the judge that his sureties are living, and resident in Great Britain, and have not been adjudged bankrupt or become insolvent, and in default thereof he may be required to enter into fresh security within such time as shall be directed.

14. Every appointment of an official liquidator shall be advertised, in such manner as the judge shall direct, immediately after he has been appointed, and has given security.

Form 15 in sched. III.

15. Where it is desirable to appoint provisionally an official liquidator, an application for that purpose may, at any time after the presentation of the petition for winding up the company, be made by summons, without advertisement or notice to any person, unless the judge shall otherwise direct, and such provisional official liquidator may, if the judge shall think fit, be appointed without security.

16. In case of the death, removal, or resignation of an official liquidator another shall be appointed in his room, in the same manner as directed in the case of a first appointment, and the proceedings for that purpose may be taken by such party interested as may be authorized by the judge to take the same.

17. The official liquidator shall, with all convenient speed after he is appointed, proceed to make up, continue, complete, and rectify the books of

account of the company; and shall provide and keep such books of account as shall be necessary, or as the judge may direct, for the purposes aforesaid, and for showing the debts and credits of the company, including a ledger which shall contain the separate accounts of the contributories, and in which every contributory shall be debited from time to time with the amount payable by him in respect of any call to be made as provided by the said Act and these rules.

18. The official liquidator shall be allowed in his accounts, or otherwise paid, such salary or remuneration as the judge may from time to time direct, including any necessary employment of assistants or clerks by the official liquidator, to which regard shall be had; and such salary or remuneration may either be fixed at the time of his appointment, or at any time thereafter, as the judge may think fit. Every allowance of such salary or remuneration, unless made at the time of his appointment, or upon passing an account, shall be made upon application for that purpose by the official liquidator, on notice to such persons (if any), and supported by such evidence as the judge shall require; nevertheless, the judge may from time to time allow any sum he may think fit to the official liquidator, on account of the salary or remuneration to be thereafter allowed. See regulation as to mode of remunerating official liquidators in this App. ad. fin.

19. The accounts of the official liquidator shall be left at the judge's chambers at the times directed by the order appointing him, and at such other times as may from time to time be required by the judge, and such accounts shall, upon notice to such parties (if any) as the judge shall direct, be passed and verified in the same manner as receivers' accounts.

Proof of Debts.

20. For the purpose of ascertaining the debts and claims due from the company, and of requiring the creditors to come in and prove their debts or claims, an advertisement shall be issued at such time as the judge shall direct; and such advertisement shall fix a time for the creditors to send their names and addresses, and the particulars of their debts or claims; and the names and addresses of their solicitors (if any) to the official liquidator, and appoint a day for adjudicating thereon.

Form 16 in sched. III

As to sending in claim, *Forwood's claim*, 5 Ch. 18; and see note to s. 158.

21. The creditors need not attend upon the adjudication, nor prove their debts or claims, unless they are required to do so by notice from the official liquidator; but upon such notice being given, they are to come in and prove their debts or claims within a time to be therein specified.

22. The official liquidator shall investigate the debts and claims sent in to him, and ascertain, so far as he is able, which of such debts and claims are justly due from the company; and he shall make out and leave at the chambers of the judge, a list of all the debts and claims sent in to him, distinguishing which of the debts and claims, or parts of the debts and claims so claimed, are in his opinion justly due and proper to be allowed, without further evidence, and which of them, in his opinion, ought to be proved by the creditors; and he shall make and file, prior to the time appointed for adjudication, an affidavit, setting forth which of the debts and claims in his opinion are justly due and proper to be allowed without further evidence, and stating his belief that such debts and claims are justly due and proper to be allowed, and the reasons for such belief.

Forms 17, 18 in sched. III.

23. At the time appointed for adjudicating upon the debts and claims or at any adjournment thereof, the judge may either allow the debts and claims upon the affidavit of the official liquidator, or may require the same, or any of them, to be proved by the claimants, and adjourn the adjudication thereon to a time to be then fixed; and the official liquidator shall give notice to the creditors whose debts or claims have been so allowed, of such allowance.

Form 19 in sched. III.

24. The official liquidator shall give notice to the creditors, whose debts or claims have not been allowed upon his affidavit, that they are required to come in and prove the same by a day to be therein named, being not less than four days after such notice, and to attend at a time to be therein named, being the time appointed by the advertisement, or by adjournment (as the case may be) for adjudicating upon such debts and claims.

Forms 20, 21 in sched. III.

25. The value of such debts and claims as are made admissible to proof by the 158th section of the said Act, shall, so far as is possible, be estimated

according to the value thereof at the date of the order to wind up the company.

See note to s. 158; *Trent and Humber Co.*, 4 Ch. 112.

26. Interest on such debts and claims as shall be allowed shall be computed, as to such of them as carry interest, after the rate they respectively carry; any creditor whose debt or claim so allowed does not carry interest, shall be entitled to interest, after the rate of 4*l.* per centum per annum, from the date of the order to wind up the company, out of any assets which may remain after satisfying the costs of the winding-up, the debts and claims established, and the interest of such debts and claims as by law carry interest.

This rule is *ultra vires* and invalid, and interest can be paid on those debts only which carry interest at law; *Hatfield Cask Co.*, 11 W. R. 971; *Herefordshire Banking Co*, 4 Eq 250; *E of England Banking Co.*, 6 Eq. 368, 4 Ch. 14.

27. Such creditors as come in and prove their debts or claims pursuant to notice from the official liquidator, shall be allowed their costs of proof, in the same manner as in the case of debts proved in a cause.

Cons. Order XL., Rule 24.

Where the company unsuccessfully disputes a claim, the costs of the litigation must be paid in full out of the assets of the company. *Bailey and Leetham's case*, 8 Eq 94. *Ex parte J. M Smith*, 3 Ch. 125.

Where a claim is adjourned into court, and allowed with costs out of the estate, only the costs of the adjournment are meant to be given, and the costs of proof in chambers must be added to the amount of the claim. *Ex parte Wright and Gamble*, 8 Eq. 123.

28. The result of the adjudication upon debts and claims shall be stated in a certificate to be made by the chief clerk, and certificates as to any of such debts and claims may be made from time to time. All such certificates shall state whether the debts or claims are allowed or disallowed, and whether allowed as against any particular assets, or in any other qualified or special manner.

Forms 22, 23 in sched. III.

List of Contributories.

29. The official liquidator shall, with all convenient speed after his appointment, or at such time as the judge shall direct, make out and leave

at the chambers of the judge a list of the contributories of the company; and such list shall be verified by the affidavit of the official liquidator, and shall, so far as is practicable, state the respective addresses of, and the number of shares or extent of interest to be attributed to each such contributory, and distinguish the several classes of contributories. And such list may from time to time, by leave of the judge, be varied or added to by the official liquidator.

Forms 24, 25, 29, 30, 32 in sched. III.

Where a name is placed on the list of contributories, but in consequence of there being no other description it is doubtful to whom it applies, a person of the name should, before moving to strike his name off the list, communicate with the official liquidator to give him an opportunity of stating whether he is the person meant; *Ex parte Webb*, 9 Jur. N. S. 856

30. Upon the list of contributories being left at the chambers of the judge, the official liquidator shall obtain an appointment for the judge to settle the same, and shall give notice in writing of such appointment to every person included in such list, and stating in what character, and for what number of shares or interest such person is included in the list; and, in case any variation or addition to such list shall at any time be made by the official liquidator, a similar notice in writing shall be given to every person to whom such variation or addition applies. All such notices shall be served four clear days before the day appointed to settle such list, or such variation or addition.

Forms 26—28 in sched III

31. The result of the settlement of the list of contributories shall be stated in a certificate by the chief clerk; and certificates may be made from time to time for the purpose of stating the result of such settlement down to any particular time, or as to any particular person, or stating any variation of the list.

Form 31 in sched. III.

Sales of Property.

32. Any real or personal property belonging to the company may be sold, with the approbation of the judge, in the same manner as in the case of a sale under a decree or order of the court in a suit, or, if the judge shall so

direct, by the official liquidator; and upon any such sale by the official liquidator, the conditions or contracts of sale shall be settled and approved of by the judge, unless he shall otherwise direct; and the judge may, if he thinks fit, direct such conditions and contracts, and the abstract of the title to the property, to be submitted to one of the conveyancing counsel of the court, under the 2nd of the Consolidated General Orders, and may, on any sale by public auction, fix a reserved bidding; and, unless, on account of the small amount of the purchase moneys or other cause, it shall, having regard to the amount of the security given by the official liquidator, be thought proper that the purchase moneys shall be paid to him, all conditions and contracts of sale shall provide that the purchase moneys shall be paid by the respective purchasers into the Bank of England, to the account of the official liquidator of the company.

Calls.

33. Every application to the judge to make any call on the contributories, or any of them, for any purpose authorized by the said Act, shall be made by summons, stating the proposed amount of such call; and such summons shall be served four clear days at the least before the day appointed for making the call, on every contributory proposed to be included in such call; or, if the judge shall so direct, notice of such intended call may be given by advertisement.

Forms 33—35 in sched. III.

34. When any order for a call has been made, a copy thereof shall be forthwith served upon each of the contributories included in such call, together with a notice from the official liquidator specifying the amount or balance due from such contributory (having regard to the provisions of the said Act) in respect of such call; but such order need not be advertised unless for any special reason the judge shall so direct.

Forms 36, 37 in sched. III.

35. At the time of making an order for a call, the further proceedings relating thereto shall be adjourned to a time subsequent to the day appointed for the payment thereof, and afterwards from time to time so long as may be necessary; and at the time appointed by any such adjournment, or upon

a summons to enforce payment of the call, duly served, and upon proof of the service of the order, and notice of the amount due, and non-payment, an order may be made for such of the contributories who have made default, or of such of them against whom it shall be thought proper to make such order, to pay the sum which by such former order and notice they were respectively required to pay, or any less sum which may appear to be due from them respectively.

Forms 38, 39, 42 in sched. III.

Payment in of Moneys and Deposit of Securities.

36. If any official liquidator shall not pay all the moneys received by him into the Bank of England, to the account of the official liquidator of the company, within seven days next after the receipt thereof, unless the judge shall have otherwise directed, such official liquidator shall be charged in his account with ten shillings for every 100*l.*, and a proportionate sum for any larger amount, retained in his hands beyond such period, for every seven days, during which the same shall have been so retained, and the judge may, for any such retention, disallow the salary or remuneration of such official liquidator.

37. All bills, notes, and other securities payable to the company or to the official liquidator thereof shall, as soon as they shall come to the hands of such official liquidator, be deposited by him in the Bank of England for the purpose of being presented by the bank for acceptance and payment or for payment only, as the case may be.

38. All orders for payment of calls, balances, or other moneys due from any contributory or other person, shall direct the same to be paid into the Bank of England, to the account of the official liquidator of the company, unless, on account of the smallness of the amount or other cause, it shall, having regard to the amount of the security given by the official liquidator, be thought proper to direct payment thereof to the official liquidator. Provided that where any such order has been made directing payment of a specific sum into the Bank of England, in case it shall be thought proper for the purpose of enabling the official liquidator to issue execution or take other proceedings to enforce the payment thereof, or for any other reason an order may, either before service of such former order, or after the time

thereby fixed for payment, be made, without notice, for payment of the same sum to the official liquidator.

When the official liquidator desires to issue a writ of fi fa. against a contributory who has not paid a call, he must obtain an order for payment to himself under this rule; *Leeds Banking Co*, 1 Ch 150.

39. At the time of the service of any order for payment into the Bank of England, the official liquidator shall give to the party served a notice, to the purport or effect set forth in Form No. 40 in the third Schedule hereto, for the purpose of informing him how the payment is to be made; and before the time fixed for such payment, the official liquidator shall furnish the cashier of the Bank of England with a certificate to the purport or effect set forth in Form No. 41 in the third schedule hereto, to be signed by such cashier, and delivered to the party paying in the money therein mentioned.

40. For the purpose of enforcing any order for payment of money into the Bank of England, an affidavit of the official liquidator, to the purport or effect set forth in Form No. 43 in the third Schedule hereto, shall be sufficient evidence of the non-payment thereof.

41. All moneys, bills, notes, and other securities paid and delivered into the Bank of England, shall be placed to the credit of the account of the official liquidator of the company; and orders for any such payment and delivery shall direct the same accordingly.

Delivery out of Securities, and Payment out and Investment of Moneys.

42. All bills, notes, and other securities delivered into the Bank of England, shall be delivered out upon a request signed by the official liquidator, and countersigned by the chief clerk of the judge; and moneys placed to the account of the official liquidator shall be paid out upon cheques or orders, signed by the official liquidator, and countersigned by the chief clerk of the judge.

43. All or any part of the money for the time being standing to the credit of the account of the official liquidator at the Bank of England, and not immediately required for the purposes of the winding up, may be invested in the purchase of bank 3*l.* per cent. annuities, reduced 3*l.* per cent. annuities, new 3*l.* per cent. annuities, or new 2*l.* 10*s.* per cent.

annuities, in the name of the official liquidator, or in the purchase of Exchequer bills. All such investments shall be made by the Bank of England, upon a request signed by the official liquidator, and countersigned by the chief clerk of the judge, and which request shall be a sufficient authority for debiting the account with the purchase money; and such Exchequer bills, and in case of an exchange thereof any new Exchequer bills, shall be retained by or deposited with the Bank of England, in the name and on behalf of the official liquidator; and such annuities or Exchequer bills shall not afterwards be sold or transferred or otherwise dealt with except upon a direction for that purpose, signed by the official liquidator, and countersigned by the chief clerk of the judge, or under an order to be made by the judge.

Form 44 in sched. III

44. All dividends and interest to accrue due upon any such annuities, shall from time to time be received by the Bank of England, under a power of attorney, to be executed by the official liquidator, and placed to the credit of the account of such official liquidator; and such of the Exchequer bills as shall from time to time be in course of payment, shall be delivered by the Bank of England to one of their cashiers, who is to receive the interest due thereon, and exchange the same for new bills, in case such new bills are issued, or otherwise to receive the principal and interest due on such of the said bills, so in course of payment, as cannot be exchanged, and pay the said interest, or principal and interest, as the case may be, into the Bank of England to the credit of the account of the official liquidator of the company.

Meetings of Creditors or Contributories.

45. When the judge shall direct a meeting of the creditors or contributories of the company to be summoned under the 91st or 149th section of the said Act, the official liquidator shall give notice in writing, seven clear days before the day appointed for such meeting, to every creditor or contributory, of the time and place appointed for such meeting, and of the matter upon which the judge desires to ascertain the wishes of the creditors or contributories; or, if the judge shall so direct, such notice may be given

by advertisement, in which case the object of the meeting need not be stated, and it shall not be necessary to insert such advertisement in the *London Gazette.*

Forms 45, 46, 48 in sched. III

46. The votes of the creditors or contributories of the company at any meeting summoned by the direction of the judge, may be given either personally or by proxy; but no creditor shall appoint a proxy who is not a creditor of the company whose debt or claim has been allowed, and no contributory shall appoint a proxy who is not a contributory of the company.

Forms 46, 48 in sched. III.

47. The direction of the judge for any meeting of creditors or contributories under the 91st or 149th section of the said Act, and the appointment of a person to act as chairman of any such meeting, shall be testified by a memorandum signed by the chief clerk of the judge.

Forms 47, 48 in sched. III

Direction or Sanction of the Judge.

48. The sanction of the judge to the drawing, accepting, making, and endorsing of any bill of exchange or promissory note by any official liquidator, shall be testified by a memorandum on such bill of exchange or promissory note, signed by the chief clerk of the judge.

Form 49 in sched. III.

49. Every application for the sanction of the judge to a compromise with any contributory or other person indebted to the company, shall be supported by the affidavit of the official liquidator that he has investigated the affairs of such contributory or person, and stating his belief that the proposed compromise will be beneficial to the company, and his reasons for such belief; and the sanction of the judge thereto shall be testified by a memorandum, signed by the chief clerk of the judge, on the agreement of compromise, unless any party shall desire to appeal from the decision of the judge, in which case an order shall be drawn up for that purpose.

Forms 50, 51 in sched. III

50. The direction or sanction of the judge for any other proceeding or act to be taken or done by the official liquidator, shall be obtained upon summons, and an order shall be drawn up thereon, unless the judge shall otherwise direct.

Form 52 in sched. III.

Applications to the Court or Judge under ss. 137, 138, 141, 167, *and* 168, *of the Act.*

51. Every application under the 137th, 138th, or 141st section of the said Act shall be made by petition or motion, or, if the judge shall so direct, by summons at chambers; and every application under the 167th or 168th section of the said Act shall be made by petition.

Orders.

52. All orders made in chambers shall be drawn up in chambers, unless specially directed to be drawn up by the registrar, and shall be entered in the same manner, and in the same office, as other orders made in chambers.

Advertisements.

53. When an advertisement is required for any purpose, except where otherwise directed by these rules, the advertisement shall be inserted once in the *London Gazette*, and in such other newspaper or newspapers, and for such number of times as may be directed. The judge may, in such cases as he shall think fit, dispense with any advertisement required by these rules.

This rule enables the Court to relax the requirements of rule 2; *Land and Sea Telegraph Co.*, 18 W. R. 1150.

Admission of Documents.

54. Any party to any proceeding in court or chambers relating to the winding up of a company may, by notice in writing in the Form No. 6,

in Schedule N, to the Consolidated General Orders, or to the like effect, call on any other party thereto competent to admit the same, to admit any document, saving all just exceptions; and in case of refusal or neglect so to admit, the costs of proving such document shall be paid by the party so refusing or neglecting, unless the judge shall be of opinion that the refusal to admit was reasonable; and no costs of proving any document shall be allowed unless such notice shall have been given, except in cases where the omission to give such notice has been, in the opinion of the taxing master, a saving of expense.

Affidavits.

55. Where an order shall have been made for the winding up of any company, any person intending to use any affidavit in any proceeding under such order, shall file the same in the Record and Writ Clerks' Office, and give notice thereof to the official liquidator. The person, other than the official liquidator, filing the affidavit shall not be required to take an office copy thereof, but an office copy thereof shall be taken by the official liquidator, and he shall produce the same at the hearing of any application or proceeding upon which it is intended to be used, unless the judge shall otherwise direct.

Certificate of Chief Clerk.

56. The 48th, 49th, 50th, 51st, 52nd, and 55th rules of the 35th of the Consolidated General Orders, shall apply to all certificates of the chief clerk in the matter of the winding up of any company; nevertheless, certificates on passing the official liquidator's accounts may be approved and signed by the judge without delay, and upon being so signed, shall be filed and forthwith acted upon.

Register and File of Proceedings.

57. A register shall be kept of all proceedings in the judge's chambers, in each matter, in the same manner as required by the 57th rule of the 35th of the Consolidated General Orders, and no documents or proceedings are to be filed in the judge's chambers, unless the judge shall otherwise direct.

58. All orders, exhibits, admissions, memorandums, and office copies of affidavits, examinations, depositions, and certificates, and all other docu-

ments relating to the winding up of any company, shall be filed by the official liquidator, as far as may be, in one continuous file, and such file shall be kept by him, or otherwise, as the judge may from time to time direct. Every contributory of the company, and every creditor thereof whose debt or claim has been allowed, shall be entitled, at all reasonable times, to inspect such file free of charge, and, at his own expense, to take copies or extracts from any of the documents comprised therein, or to be furnished with such copies or extracts at a rate not exceeding three halfpence per folio of seventy-two words; and such file shall be produced in court, or before the judge, and otherwise, as occasion may require.

The solicitor to an official liquidator has no lien for his costs on the file of proceedings in the winding up and other documents relating thereto. *Ex parte Pullbrook*, 4 Ch. 627.

Provisional Official Liquidators.

59. All the above rules relating to official liquidators shall, so far as the same are applicable, and subject to the directions of the judge in each case, apply to provisional official liquidators.

Attendance and Appearance of Parties.

60. Every person, for the time being, on the list of contributories of the company left at the chambers of the judge by the official liquidator, and every person having a debt or claim against the company, allowed by the judge, shall be at liberty, at his own expense, to attend the proceedings before the judge, and shall be entitled, upon payment of the costs occasioned thereby, to have notice of all such proceedings as he shall by written request desire to have notice of; but if the judge shall be of opinion that the attendance of any such person upon any proceeding has occasioned any additional costs which ought not to be borne by the funds of the company, he may direct such costs, or a gross sum in lieu thereof, to be paid by such person; and such person shall not be entitled to attend any further proceedings until he has paid the same.

A contributory has a right to cross-examine a person claiming against a company on his affidavit in support of his claim. *Brampton, &c., Rail. Co.*, 11. Eq. 428.

61. The judge may from time to time appoint any one or more of the contributories, or creditors, as he thinks fit, to represent before him, at the expense of the company, all or any class of the contributories or creditors, upon any question as to compromise with any of the contributories or creditors, or in and about any other proceedings before him relating to the winding up of the company, and may remove the person or persons so appointed. In case more than one person shall be so appointed, they shall unite in employing the same solicitor to represent them.

A creditor's representative ought not to be appointed save under very special circumstances; *McIver's claim*, 17 W. R. 794, 5 Ch. 424.

62. No contributory or creditor shall be entitled to attend any proceedings at the chambers of the judge, unless and until he has entered in a book to be kept there for that purpose his name and address, and the name and address of his solicitor (if any), and upon any change of his address or of his solicitor, his new address, and the name and address of his new solicitor.

Form 53 in sched. III.

Services of Summonses, Notices, &c.

63. Services upon contributories and creditors shall be effected (except when personal service is required) by sending the notice, or a copy of the summons or order or other proceeding, through the post in a pre-paid letter, addressed to the solicitor of the party to be served (if any) or otherwise to the party himself at the address entered or last entered pursuant to the preceding rule; or if no such entry has been made, then, if a contributory, to his last known address or place of abode; and if a creditor, to the address given by him, pursuant to the foregoing rule 20; and such notice, or copy summons, order, or other proceeding shall be considered as served at the time the same ought to be delivered in the due course of delivery by the post-office, and notwithstanding the same may be returned by the post-office.

Gen. Intern. Agency Co., 15 W. R. 973.

64. No service under these rules shall be deemed invalid by reason that the Christian name, or any of the Christian names of the person on whom

service is sought to be made, has been omitted, or designated by initial letters, in the list of contributories, or in the summons, order, notice, or other documents wherein the name of such contributory or creditor is contained, provided the judge is satisfied that such service is in other respects sufficient.

Termination of Winding up.

65. Upon the termination of the proceedings in chambers for the winding up of any company, a balance sheet shall be brought in by the official liquidator of his receipts and payments, and verified by his affidavit; and the official liquidator shall pass his final account, and the balance (if any) due thereon shall be certified. And upon payment of such balance, in such manner as the court or judge shall direct, the recognisance entered into by the official liquidator and his sureties may be vacated.

66. When the official liquidator has passed his final account, and the balance (if any) certified to be due thereon has been paid in such manner as the judge shall direct, a certificate shall be made by the chief clerk, that the affairs of the company have been completely wound up; and in case the company has not been already dissolved, the official liquidator shall, immediately after such certificate has become binding, apply to the judge for an order that the company be dissolved from the date of such order.

Forms 55, 56 in sched. III.

67. When the proceedings for winding up any company have been completed, the file of proceedings, and the book containing the official liquidator's account, shall be deposited in the Record and Writ Clerks' Office.

Duties of Solicitor of Official Liquidator.

68. The solicitor of the official liquidator shall conduct all such proceedings as are ordinarily conducted by solicitors of the court; and where the attendance of his solicitor is required on any proceeding in court or chambers, the official liquidator need not attend in person, except in cases where his presence is necessary in addition to that of his solicitor, or the judge shall direct him to attend.

Forms.

69. The forms set forth or referred to in the third Schedule to these orders, with such variations as the circumstances of each case may require, may be used for the respective purposes mentioned in such Schedule.

Fees.

70. Solicitors shall be entitled to charge, and be allowed the fees set forth and referred to in the first Schedule hereto, unless the court or judge shall otherwise specially direct.

71. The fees of court set forth and referred to in the second Schedule hereto, shall be paid in relation to proceedings in the Court of Chancery under the Companies Act, 1862, and shall be collected by means of stamps, in the manner prescribed by the 39th of the Consolidated General Orders.

Taxation of Costs.

72. Where an order is made in court or chambers for payment of any costs, the order shall direct the taxation thereof by the taxing master; except in cases where a gross sum in lieu of taxed costs is fixed by the order, in accordance with the 37th rule of the 40th of the Consolidated General Orders.

Power of Judge.

73. The power of the court, and of the judge sitting in chambers, to enlarge or abridge the time for doing any act, or taking any proceeding, to adjourn, or review any proceeding, and to give any direction as to the course of proceeding, is unaffected by these rules.

General Directions.

74. The general practice of the court, including the course of proceeding and practice at the judge's chambers, as provided by the statute 15th and 16th Victoria, chapter 80, and the general orders of the court relative thereto, shall, in cases not provided for by the Companies Act, 1862, or these rules, and so far as the same are applicable, and not inconsistent with the said Act, or these rules, apply to all proceedings for winding up a company.

Application of Rules.

75. These rules apply only to proceedings under the Companies Act, 1862.

Commencement of Rules.

76. These rules shall take effect and come into operation on and after the 25th day of November, 1862.

Interpretation.

77. The 1st rule of the 23rd of the Consolidated General Orders, and the general interpretation clause therein, shall be deemed to extend and apply to the rules of thi order; and such rules shall have the effect of, and be deemed to be general orders of the court.

WESTBURY, C.
JOHN ROMILLY, M. R.
RICHD. T. KINDERSLEY, V.-C.
JOHN STUART, V.-C.
W. P. WOOD, V.-C.

THE FIRST SCHEDULE.

FEES AND CHARGES TO BE ALLOWED TO SOLICITORS.

For preparing and drawing up every order made at chambers, and attending for same, and at the Registrar's Office to get same entered	£0	13	4
For ingrossing every order, in addition to the above fee, per folio	0	0	4

For other duties performed, such of the fees on the higher scale authorized by the 2nd rule of the 38th of the Consolidated General Orders, and the regulations as to solicitors' fees subjoined thereto, as are applicable; except that the special fee allowed on creditors' claims is not to apply.

Where under such regulations a fee of three guineas may be allowed for attending any summons or other appointment at the judge's chambers, the same may be increased to any sum not exceeding five guineas.

The fee of 2*s.* 6*d.* allowed by such regulations for notices and services, shall be reduced to 1*s.* 6*d.*, where the service may be effected as provided by the above rule 63.

The usual charges relating to printing shall be allowed in lieu of copies for service where the fees for copies would exceed the charges for printing and amount to more than 3*l.*

THE SECOND SCHEDULE.

FEES TO BE COLLECTED BY MEANS OF STAMPS.

In the Judge's Chambers.

For every summons	£0	3	0
For every order drawn up by the chief clerk	0	5	0

For every advertisement	1	0	0
For every certificate	0	5	0
For every oath, affirmation, declaration, or attestation upon honour	0	1	6

In the Registrars' Office.

For every order made in court	1	0	0
For every order made in chambers	0	5	0
For every office copy of an order	0	5	0

In the Examiners' Office.

The same fees as those directed to be paid and collected in such office by the 2nd rule of the 39th of the Consolidated General Orders, and the regulations subjoined thereto.

In the Record and Writ Clerks' Office, and Report Office.

Such of the fees directed to be paid and collected in such office by the 2nd rule of the 39th of the Consolidated General Orders, and the regulations subjoined thereto, as are applicable.

In the Taxing Masters' Office.

The same fees as those directed to be paid and collected by the 2nd rule of the 39th of the Consolidated General Orders, and the regulations subjoined thereto.

In the Office of the Lord Chancellor's Principal Secretary.

For every petition	£1	0	0

In the Office of the Secretary of the Rolls.

For every petition	1	0	0

THE THIRD SCHEDULE

FORMS.

No. 1. *Advertisement of Petition.* [Rule 2.]

In the matter of the Companies Act, 1862; and of the company.

Notice is hereby given, that a petition for the winding up of the above named company by the court [*or*, subject to the supervision of the court] of Chancery was, on the day of , 18 , presented to the Lord Chancellor [*or*, the Master of the Rolls] by the said company, [*or*, by A.B., of , a creditor [*or*, contributory] of the said company [*or*, *as the case may be*]. And that the said petition is directed to be heard before the Vice-Chancellor [*or*, Master of the Rolls] on the day of , 18 ; and any creditor or contributory of the said company desirous to oppose the making of an order for the winding up of the said company under the above Act, should appear at the time of hearing, by himself or his counsel, for that purpose; and a copy of the petition will be furnished to any creditor or contributory of the said company requiring the same, by the undersigned, on payment of the regulated charge for the same.

C. and D., of, &c. [Agents for E. and F., of, &c.]
Solicitors for the petitioner.

No. 2. *Affidavit verifying Petition.* [Rule 4]

In Chancery.

In the matter, &c.

I, A. B., of, &c., make oath and say, that such of the statements in the petition now produced and shown to me, and marked with the letter A as relate to my own acts and deeds, are true, and such of the said statements as relate to the acts and deeds of any other person or persons, I believe to be true.

Sworn, &c.

No. 3. *Order for Winding up by the Court.* [25 & 26 Vict. c. 89, ss. 81, 82.]

The Master of the Rolls [*or*, Vice-Chancellor]. } day, the day of 18 In the matter, &c.

Upon the petition of the above named company [*or*, A. B., of, &c, a creditor, [*or*, contributory] of the above-named company] on the day of , 18 , preferred unto the Right Honourable the Lord High Chancellor of Great Britain [*or*, Master of the Rolls], and upon hearing counsel for the petitioner, and for , and upon reading the said petition an affidavit of (the said petitioner) filed, &c., verifying the said petition, an affidavit of L. M., filed the day of , 18 , the *London Gazette* of the day of , the *Times* newspaper of the day of , [*enter any other papers*] each containing an advertisement of the said petition [*enter any other evidence*], his honour [*or*, this court] doth order, that the said company be wound up by this court, under the provisions of the Companies Act, 1862.

No. 4. *Order for Winding up, subject to Supervision.* [25 & 26 Vict. c. 89, ss. 147, 148.]

The Master of the Rolls [*or*, Vice-Chancellor]. } day, the day of 18 In the matter, &c.

Upon the petition, &c., his honour, [*or*, this court] doth order, that the voluntary winding up of the said company be continued, but subject to the supervision of this court; and any of the proceedings under the said voluntary winding up may be adopted as the judge shall think fit And the creditors, contributories, and liquidators of the said company, and all other persons interested, are to be at liberty to apply to the judge at chambers as there may be occasion.

No. 5. *Advertisement of Order to Wind up.* [Rule 6.]

In the matter, &c.

By an order made by the Master of the Rolls [*or*, Vice-Chancellor in the above matter, dated the day of . 18 on the

petition of the above-named company [*or*, A. B., of], it was ordered that, &c. [*as in order*].

C. & D. of, &c.,
Solicitors for the said petitioner.

No. 6. *Advertisement of Time and Place fixed for the Appointment of Official Liquidator.* [Rule 9].

In the matter, &c.

Notice is hereby given that the Master of the Rolls [*or*, the Vice-Chancellor] has fixed the day of , 18 , at o'clock in the noon, at his chambers in the Rolls Yard, Chancery Lane, [*or*, at No. , Lincoln's Inn], in the county of Middlesex, as the time and place for the appointment of an official liquidator of the above-named company.

G. H.,
Chief Clerk.

No. 7. *Proposal for Appointment of Official Liquidator (and Sureties) where Form No. 6 has been issued.*

In the matter, &c.

We, the undersigned contributories of the above-named company for the number of shares placed opposite our respective names, hereby propose Mr. W. T., of, &c., public accountant, to be the official liquidator of the said company, [and H. N., of, &c., and J. P., of, &c., to be his sureties].

Name.	Address	Number of Shares held.

No. 8. *Order appointing an Official Liquidator.* [Rules 10, 11].

Master of the Rolls [*or*, Vice-Chancellor] at Chambers.	, the day of , 18 In the matter, &c.

Upon the application, &c., and upon reading, &c., the judge doth hereby appoint R. P. H., of, &c., official liquidator of the above-named company. [*If security has not been given add*, and it is ordered that the said R. P H. do, on or before the day of next, give security to be approved of by the judge.] And it is ordered that the said R. P. H. do, on the day of , and day of , 18 , and the same days in each succeeding year, leave his accounts at the chambers of the said judge. And it is ordered that all moneys to be received by the said R. P. H. be paid by him into the Bank of England, to the credit of the account of the official liquidator of the said company, within seven days after the receipt thereof. [*In case two or more official liquidators are appointed add*, and the said judge doth declare that the following acts, required or authorized by the above statute to be done by the official liquidator, may be done by either [*or*, any one, *or*, two] of the official liquidators hereby appointed, that is to say, [*describe the acts*]; and that all other acts so required or authorized to be done, be done by both [*or*, all] the official liquidators hereby appointed.

No. 9. *Order appointing a Provisional Official Liquidator.*

[Rules 10, 11, 15, 59.]

Master of the Rolls [*or* Vice-Chancellor] at Chambers.	, the day of 18 In the matter, &c.

Upon the application, &c , and upon reading, &c., the judge doth hereby appoint R. P. H., of, &c., provisionally, official liquidator of the above-named company [*if security dispensed with add*, without security ; *or, if security is to be given, add directions as to security, accounts, and payment into the Bank*,

as in Form No. 8]. And the said judge doth hereby limit and restrict the powers of the said R. P. H., as such provisional official liquidator, to the following acts, that is to say [*describe the acts which the provisional official liquidator is to be authorized to do*].

No. 10. *Recognizance of the Official Liquidator and Sureties.*

[Rule 10.]

18 .

In the matter, &c.

The Master of the Rolls [*or* Vice-Chancellor] has approved of and allowed this recognizance.

G. H.,
Chief Clerk.

R. P. H., of, &c., W. B., of, &c., and T. P., of, &c., before our sovereign lady the Queen in her High Court of Chancery personally appearing, do acknowledge themselves, and every of them doth acknowledge himself, to owe to the Right Honourable Sir John Romilly, Knight, Master of the Rolls, and the Honourable Sir Richard Torin Kindersley, Knight, the senior Vice-Chancellor of the said court, the respective sums of lawful money of Great Britain set opposite to their respective names in the schedule thereto, to be paid to the said Sir John Romilly and Sir Richard Torin Kindersley, or one of them, or the executors or administrators of them, or one of them; and in default of payment of the said sums, the said R. P. H., W. B., and T. P., are willing and do agree, and every of them is willing and doth agree for himself, his heirs, executors, and administrators, by these presents, that the said sums shall be levied, recovered, and received of and from them and every of them, and of and from all and singular the manors, messuages, lands, tenements, and hereditaments, goods, and chattels, of them and every of them, wheresoever the same shall be found. Witness our sovereign lady Victoria, by the grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, and so forth at Westminster, the day of , 18 .

Whereas, in the matter, of, &c., [*take title from order to winding-up*] the Master of the Rolls [*or*, Vice-Chancellor] has, by an order dated the day of , 18 , appointed the said R. P. H. official liquidator of the said company, and has thereby directed him to give security to be approved of by the said judge [*or, in case the security precedes the order appointing*, has approved of the said R. P. H. as a proper person to be appointed official liquidator of the said company, upon his giving security.] And whereas the said judge has approved of the said W. B. and T. P. to be sureties for the said R. P. H. in the amounts set opposite to their respective names in the Schedule hereto, and has also approved of the above-written recognizance, with the under-written condition, as a proper security to be entered into by the said R. P. H., W. B. and T. P., pursuant to the said order and [*or*, pursuant to] the general order of the said court in that behalf; and in testimony of such approbation the chief clerk of the said judge hath signed an allowance in the margin hereof. Now the condition of the above-written recognizance is such that if the said R. P. H., his executors, or administrators, or any of them, do and shall duly account for what the said R. P. H. shall receive, or become liable to pay, as official liquidator of the said company at such periods and in such manner as the said judge shall appoint, and pay the same as the said judge hath [by the said order] directed, or shall hereafter direct, then the above recognizance to be void, otherwise to remain in full force and virtue.

THE SCHEDULE ABOVE REFERRED TO.

R. P. H. . . .	———	. Thousand pounds.
W. B. . .	———	. Thousand pounds.
T. P. . .	———	. Thousand pounds.

Taken and acknowledged by the above-named R. P. H., &c., &c.

No. 11. *Affidavit of Sureties.* [Rule 10.]

In Chancery.

In the matter, &c.

We, W. B., of, &c., and T. P., of, &c., severally make oath and say as follows:

1. I, the said W. B., for myself, say that I am worth the sum of £ of lawful money of Great Britain over and above what is sufficient for the payment of all my just debts and liabilities.

2. And I, the said T. P., for myself, say that I am worth the sum of £ , of, &c. [*as above.*]

Sworn, &c.

No. 12. *Sanction of Appointment of Solicitor to Official Liquidator, and Appointment.* [25 & 26 Vict. c. 89, s. 97.]

In the matter, &c.

The Master of the Rolls [*or*, Vice-Chancellor] sanctions the official liquidator appointing a solicitor, to assist him in the performance of his duties.

G. H.,
Chief Clerk.

I hereby appoint Messrs. C. and D., of, &c., to be my solicitors in this matter.

Dated this day of , 18 .

R. P. H., Official Liquidator.

No. 13. *Order for Payment of Money or Delivery of Books, &c., to Official Liquidator.* [25 & 26 Vict. c. 89, ss. 100, 101.]

The Master of the Rolls [or, Vice-Chancellor] at Chambers. } day, the day of , 18

In the matter, &c.

Upon the application of, &c., and on reading, &c., it is ordered that, A. B., of, &c., do, within four days after service hereof, pay to [*or*, deliver, convey, surrender, or transfer to or into the hands of] R. P. H., the official

liquidator of the said company, at the office of the said R. P. H., situate at, &c., the sum of £ being the amount of debt appearing to be due from the said A. B. on his account with the said company [*or*, any sum or balance, books, papers, estate, or effects], [*or*, *specifically describe the property*] now being in the hands of the said A. B., and to which the said company is *primâ facie* entitled [*or*, *otherwise*, *as the case may be*].

No. 14. *Direction to open Account at the Bank of England.*

[Rules 11, 32, 36—44.]

The Master of the Rolls [*or* Vice-Chancellor at Chambers. } , day of , 18

In the matter, &c.

To the Governor and Company of the Bank of England.

Gentlemen,

An order dated the day of 18 , having been made in the above matter by the Master of the Rolls [*or*, the Vice-Chancellor] for winding up the above-named company by the Court of Chancery, under the provisions of the said Act, and R. P. H., of having by order dated the day of 18 , been appointed the official liquidator of the said company, you are requested to open an account, to be entitled "The account of the Official Liquidator of the Company," in your books, pursuant to the said Act.

All cheques drawn upon such account must be signed by the official liquidator, whose signature is attached thereto, and countersigned by one of the chief clerks of the said judge, whose signatures are also attached thereto.

I am, Gentlemen,
Your most obedt. servt.,
G. H.,
Chief Clerk.

Signatures.

R. P. H., Official liquidator.
G. W. } Chief Clerks of the Master of the Rolls
G. H. } [*or*, Vice-Chancellor

No. 15. *Advertisement of Appointment of Official Liquidator.*

[Rule 14.]

In the matter, &c.

The Master of the Rolls [*or*, the Vice-Chancellor] has by an order dated the day of , 18 , appointed R. P. H., of to be official liquidator of the above-named company.

Dated this day of , 18 .

G. H.,
Chief Clerk.

No. 16. *Advertisement for Creditors.* [Rule 20.]

In the matter, &c.

The creditors of the above-named company are required, on or before the day of 18 , to send their names and addresses, and the particulars of their debts or claims, and the names and addresses of their solicitors, if any, to R. P. H., of , the official liquidator of the said company, and, if so required by notice in writing from the said official liquidator, are by their solicitors to come in and prove their said debts or claims, at the chambers of the Master of the Rolls [*or*, the Vice-Chancellor], in the Rolls Yard, Chancery Lane [*or*, at No. Lincoln's Inn], in the county of Middlesex, at such time as shall be specified in such notice, or in default thereof they will be excluded from the benefit of any distribution made before such debts are proved.

day, the day of 18 , at o'clock in the noon, at the said chambers, is appointed for hearing and adjudicating upon the debts and claims.

Dated this day of 18 .

G. H.,
Chief Clerk.

No. 17. *Affidavit of Official Liquidator as to Debts and Claims.*

[Rule 22.]

In Chancery,

In the matter, &c.

I, R. P. H., of, &c., the official liquidator of the above-named company, make oath, and say as follows :—

1. I have, in the paper writing now produced and shown to me, and marked with the letter A, set forth a list of all the debts and claims the particulars of which have been sent in to me by persons making claims upon, or claiming to be creditors of the said company, pursuant to the advertisement issued in that behalf, dated the day of 18 ; and the names and addresses of the persons by whom such claims are made.

2. I have investigated the said debts and claims and examined the same with the books and documents of the said company, in order to ascertain, so far as I am able, which of such debts and claims are justly due from the said company ; and I have, in the first part of the said list, set forth such of the said debts and claims, or parts thereof, as, in my opinion, are justly due from the said company, and proper to be allowed without further evidence; and I have, in the sixth column of the said first part of the said list, set forth the amounts proper to be allowed in respect of such debts and claims ; and I believe that such amounts respectively are justly due and proper to be allowed ; and I have, in the seventh column of the said first part of the said list, stated my reasons for such belief.

3. I have, in the second part of the said list, set forth such of the said debts and claims as in my opinion ought to be proved by the respective creditors.

Sworn, &c.

No. 18. *Exhibit referred to in Affidavit No.* 17.

A.

In the matter, &c.

List of debts and claims of which the particulars have been sent in to the official liquidator.

This paper writing, marked A., was produced and shown to R. P H., and is the same as is referred to in his affidavit, sworn before me this day of , 18 .

W. B., &c.

First Part.—Debts and claims proper to be allowed without further evidence.

Serial No.	Names of Creditors	Addresses and Descriptions	Particulars of Debt or Claim.	Amount Claimed	Amount proper to be allowed	Reasons for belief that amounts are proper to be allowed
				£ s. d.	£ s. d.	

Second Part.—Debts and claims which ought to be proved by the creditors

Serial No	Name of a Creditor.	Addresses and Descriptions.	Particulars of Debt or Claim	Amount Claimed
				£ s. d

No. 19. *Notice to Creditor of Allowance of Debt.* [Rule 23.]

In the matter, &c. [Place and date.]

Sir,

The debt claimed by you in this matter has been allowed by the judge, at the sum of £ . . [*If part only allowed add*, if you claim to have a larger sum allowed, you are hereby required to come in and prove the further amount claimed, *&c., as in next Form.*]

I am, &c.,

R. P. H., Official Liquidator.

To Mr. P. R.

No. 20. *Notice to Creditors to come in and prove their Debts.*

[Rule 24.]

In the matter, &c.

You are hereby required to come in and prove the debt claimed by you against the above-named company, by filing your affidavit, and giving notice thereof to me, on or before the day of next; and you are to attend by your solicitor at the chambers of the Master of the Rolls, in the Rolls Yard, Chancery Lane [*or*, of the Vice-Chancellor , at No. , Lincoln's Inn], in the county of Middlesex, on the day of 18 , at o'clock in the noon, being the time appointed for hearing and adjudicating upon the claim.

Dated this day of 18 .

R. P. H., Official Liquidator.

To Mr. R. S. T.

No. 21. *Affidavit of Creditor, in Proof of Debt.* [Rule 24.]

In Chancery.

In the matter, &c.

I, S. T., of, &c., make oath, and say as follows :—

1. The above-named company was, on the day of , 18 , the date of the order for winding up the same, and still is justly and truly indebted to me in the sum of £ for, &c. [*Describe shortly the nature of the debt, and exhibit any security for it; and in the case of a trade*

debt exhibit a bill of parcels, and verify the reasonableness of the charges, as in proving a debt in a suit.]

2. I have not, nor hath, nor have any person or persons by my order, or to my knowledge or belief, for my use received the said sum of £ or any part thereof, or any security or satisfaction for the same or any part thereof, [*if any security add,*] except the said, [*describe the security*] hereinbefore mentioned or referred to.

Sworn, &c.

No. 27. *Certificate of Chief Clerk, as to Debts and Claims.*

[Rule 28.]

In the matter, &c.

In pursuance of the directions given to me by the Master of the Rolls [or, Vice-Chancellor], I hereby certify that the result of the adjudication upon debts and claims against the above-named company, brought in pursuant to the advertisement issued in that behalf, dated the day of , 18 , so far as such adjudication has up to the date of this certificate been proceeded with, is as follows :—

The debts and claims which have been allowed are set forth in the first Schedule hereto, and with the interest thereon and costs mentioned in the said Schedule, are due to the persons therein named, and amount altogether to £

I have in the first part of the said Schedule set forth such of the said debts and claims as carry interest, and the interest thereon has been computed after the rate they respectively carry down to the date of this certificate.

I have in the second part of the said Schedule set forth such of the said debts and claims as do not carry interest, and the interest thereon has been computed at the rate of £4 per cent. per annum, from the day of 18 , being the date of the said order to wind up the company, down to the date of this certificate (*a*).

The claims set forth in the second Schedule hereto have been brought in by the persons therein named, and have been disallowed.

The evidence produced, &c.

(*a*) See note to Rule 26.

THE FIRST SCHEDULE ABOVE REFERRED TO.

First Part—Debts and claims which carry interest.

No.	Names of Creditors.	Addresses and Descriptions.	Particulars of Debt.	Total due
				£ s. d.
1.	J L.	29, Street, London, Stationer	On Bill of Exchange dated, &c.	
		Principal	£	
		Interest at £ per cent per annum (less Property Tax) from 186 to the date of this Certificate	£	
		Costs of Proof .	£	
			Total first Part.	

Second Part—Debts and claims which do not carry interest.

No	Names of Creditors	Addresses and Descriptions	Particulars of Debt.	Interest on Principal (less Property Tax).	Total due
				£ s. d.	£ s. d.
40	W. P.	15, Street, London.			
		Coal Merchant	Goods sold		
		Principal	£50 0 0	2 0 0	54 0 0
		Costs of Proof	2 0 0		
			Totals £		
			Add Total first Part	£	
			Total first and second Parts	£	

THE SECOND SCHEDULE ABOVE REFERRED TO.

No	Names of Creditors.	Addresses and Descriptions.	Particulars of Claim	Amount Claimed
				£ s. d.

Dated this day of , 18 .

G. H., Chief Clerk.

Approved the day of , 18 .

No. 23. *Notice to Creditor to attend to receive Debt.* [Rule 28.]

In the matter, &c.

Sir,

Upon application at my office, No. Street, Middlesex, on or after the instant, between the hours of ten and four o'clock, you may receive a cheque for the amount of your debt, allowed in this matter as under :—

Principal	£
Interest	£
Costs of Proof	£
Total	£

If you cannot attend personally, the cheque will be delivered to your order, upon your filling up and signing the subjoined form.

The bills or securities (if any) held by you must be produced at the time of such application.

Dated this day of , 18 .

I am, &c.,

To Mr. S. T. R. P. H., Official Liquidator.

[*Form of Order.*]

Sir,

Please to deliver to W. R. the cheque for £ referred to in the above letter as payable to me.

S. T.,
Creditor.

To Mr. R. P. H., official liquidator of the company.

No. 24. *Affidavit in Support of List of Contributories.*

[Rule 29.]

In Chancery.

In the matter, &c.

I, R. P. H., of, &c., the official liquidator of the above-named company, make oath, and say, as follows :—

1. The paper writing now produced and shown to me, and marked with the letter A, contains a list of the contributories of the said company, made out by me from the books and papers of the said company, together with their respective addresses, and the number of shares [*or*, extent of interest] to be attributed to each; and such list is, to the best of my knowledge, information, and belief, a true and accurate list of the contributories of the said company, so far as I have been able to make out and ascertain the same.

2. I have, in the first part of the said list marked A, distinguished the persons who are contributories in their own right.

3. I have, in the second part of the said list marked A, distinguished the persons who are contributories as being representatives of, or being liable to the debts of others.

Sworn, &c.

No. 25. *List of Contributories referred to in Form No. 24.*

A.

In the matter, &c.

This list of contributories marked A, was produced and shown to R. P. H., and is the same list of contributories as is referred to in his affidavit, sworn before me this day of , 18 .

W. B., &c.

First Part.—Contributories in their own right.

Serial No	Name	Address	Description	In what Character included.	Number of Shares [*or*, extent of interest].

Second Part.—Contributories as being representatives of, or liable to the debts of others

Serial No.	Name.	Address.	Description	In what Character included.	Number of Shares [*or*, extent of interest].

No. 26. *Notice to Contributories of Appointment to settle List of Contributories.* [Rule 30.]

In the matter, &c.

The Master of the Rolls [*or* Vice-Chancellor], has appointed the day of , 18 , at of the clock in the noon at his chambers, in the Rolls Yard, Chancery Lane [*or*, at No. , Lincoln's Inn], in the county of Middlesex, to settle the list of the contributories of the above-named company, made out and left at the chambers of the said judge by the official liquidator of the said company, and you are included in such list in the character, and for the number of shares [*or*, extent of interest] stated below; and if no sufficient cause is shown by you to the contrary at the time and place aforesaid, the list will be settled by the said judge, including you therein.

Dated this day of , 18 .

R. H. P., Official Liquidator.

To Mr. A. B. [and to Mr. C. D., his solicitor.]

No. on List	Name.	Address	Description.	In what Character included.	Number of Shares [*or*, extent of interest]

No. 27. *Affidavit of Service of Notice.* [Rule 30.]

In Chancery.

In the matter, &c.

I, W. S., of, &c., clerk to Messrs. C. and D., of, &c., the solicitors of the

official liquidator of the above-named company, make oath, and say as follows :—

1. The first six columns of the Schedule now produced and shown to me, and marked with the letter A, contain a true copy of the list of contributories of the said company, made out and left at the chambers of the Master of the Rolls [*or* Vice-Chancellor], by the said official liquidator, on the day of , 18 , and now on the file of proceedings of the said company, as I know from having, on the day of , 18 , examined and compared the said Schedule with the said list ; and I have, in the seventh column of the said Schedule marked A, set forth the names and addresses of the solicitors who have entered appearances for any of the contributories named in the said list.

2. I did, on the day of , 18 , in the manner hereinafter mentioned, serve a true copy of the notice now produced and shown to me, and marked B, upon each of the respective persons whose names, addresses, and descriptions appear in the second, third, and fourth columns of the said Schedule marked A, except that in the tabular form at the foot of such copies respectively I inserted the number on list, name, address, description, in what character included, and number of shares [*or*, extent of interest] of the person on whom such copy of the said notice was served, in the same words and figures as the same particulars are set forth in the said Schedule marked A

3. I served the said respective copies of the said notice, by putting such copies respectively, duly addressed to such persons respectively, or their solicitors, according to their respective names and addresses appearing in the said Schedule marked A, and with the proper postage-stamps affixed thereto as prepaid letters, into the Post Office receiving-house, No. in Street, in the county of , between the hours of and of the clock in the noon of the said day of

Sworn, &c.

No. 28. *The Schedule referred to in Form No.* 27

A.

In the matter, &c.

This Schedule marked A. was produced and shown to W. S., and is the same Schedule as is referred to in his affidavit, sworn before me, this day of , 18 .

W. B., &c.

1	2	3.	4	5	6	7
Number on List	Name	Address.	Description.	In what Character included	Number of Shares [*or*, extent of interest.]	Names and Addresses of Solicitors who have entered appearances, and been served with a copy of the notice referred to in the Affidavit of W S , to which this Schedule is an exhibit

No. 29. *Supplemental List of Contributories, and Affidavit in Support.*

[Rule 29.]

In Chancery

In the matter, &c.

I, R. P. H., of, &c., the official liquidator of the above-named company, make oath, and say as follows :—

1. Since leaving at the chambers of the judge the list of the contributories in this matter, on the day of , 18 , it has come to my knowledge that the several persons whose names are set forth in the supplemental list of contributories now produced and shown to me, and marked with the letter B, are, or have been holders of shares in [*or*, members of] the said company, and to the best of my judgment, information and belief, such persons are contributories of the said company.

2. The said supplemental list marked B, contains the names of such persons, together with their respective addresses, and the number of shares [*or*,

extent of interest] to be attributed to each; and such list is, to the best of my knowledge, information, and belief, true and accurate.

3. I have, in the first part of the said list marked B, distinguished such of the said persons as are contributories in their own right.

4. I have, in the second part of the said list marked B, distinguished such of the said persons as are contributories as being representatives of, or being liable to the debts of others.

Sworn, &c.

No. 30. *Supplemental List of Contributories referred to in Form No.* 29.

B.

In the matter, &c.

This supplemental list of contributories marked B, was produced and shown to R. P. H., and is the same supplemental list of contributories as is referred to in his affidavit, sworn before me this day of , 18 . W. B., &c.

NOTE.—*The supplemental list is to be made out in the same form as the original list, Form No.* 25.

No. 31. *Certificate of Chief Clerk of Settlement of the List of Contributories.*

[Rule 31.]

In the matter, &c.

In pursuance of the directions given to me by the Master of the Rolls [*or*, Vice-Chancellor], I hereby certify that the result of the settlement of the list of contributories of the above-named company, made out and left at the chambers of the said judge by the official liquidator of the said company on the day of , 18 , pursuant to the above statute and the general order of this court in that behalf, so far as the said list has been settled up to the date of this certificate, is as follows:—

1. The several persons whose names are set forth in the second column of the first Schedule hereto, have been included in the said list of contribu-

tories as contributories of the said company in respect of the number of shares [*or*, extent of interest] set opposite the names of such contributories respectively in the said Schedule.

I have, in the first part of the said Schedule, distinguished such of the said several persons included in the said list, as are contributories in their own right.

I have, in the second part of the said Schedule, distinguished such of the said several persons included in the said list as are contributories, as being representatives of, or being liable to the debts of others.

2. The several persons whose names are set forth in the second column of the second Schedule hereto have been excluded from the said list of contributories.

3. I have, in the seventh column of the said first and second Schedules, set forth opposite the name of each of the said several persons respectively the date when such person was included in or excluded from the said list of contributories.

The evidence produced, &c.

THE FIRST SCHEDULE ABOVE REFERRED TO.

First Part.—Contributories in their own right.

Serial No. in List.	Name.	Address	Description	In what Character included.	Number of Shares [*or*, extent of Interest].	Date when included in the List.

Second Part.—Contributories as being representatives of, or liable to the debts of others.

Serial No in List	Name	Address	Description.	In what Character included	Number of Shares [*or*, extent of Interest.]	Date when included in the List

THE SECOND SCHEDULE ABOVE REFERRED TO.

Serial No in List	Name	Address	Description.	In what Character proposed to be included.	Number of Shares [*or*, extent of Interest]	Date when excluded from the List

Dated this day of , 18 .

G. H.,
Chief Clerk.

Approved the
day of 18 .

No. 32. *Order on Application to vary List.* [Rule 29.

Master of the Rolls [*or*, Vice-Chancellor] at chambers. } 18 day the day of

In the matter, &c.

Upon the application of W. N. to review the list of contributories of the said company, in respect of the inclusion of the said W. N. therein, and that his name may be excluded therefrom, and upon hearing counsel, &c., and upon reading, &c., It is ordered, That the name of the said W. N. be excluded from the said list of contributories [*or*, the judge doth not think fit to make any order on the said application, except that the said W. N. do pay to R. P. H., the official liquidator of the said company, his costs of this application, to be taxed by the taxing master in case the parties differ].

No. 33. *Affidavit of Official Liquidator in Support of Proposal for Call.*

[Rule 33.]

In Chancery.

In the matter, &c.

I, R. P. H., of, &c., the official liquidator of the above-named company, make oath, and say as follows :—

1. I have, in the schedule now produced and shown to me, and marked with the letter A, set forth a statement, showing the amount due in respect of the debts allowed against the said company, and the estimated amount of the costs, charges, and expenses of and incidental to the winding up the affairs thereof, and which several amounts form in the aggregate the sum of £ or thereabouts.

2. I have also in the said schedule set forth a statement of the assets in hand belonging to the said company, amounting to the sum of £ and no more. There are no other assets belonging to the said company, except the amounts due from certain of the contributories of the said company, and, to the best of my information and belief, it will be impossible to realise in respect of the said amounts more than the sum of £ or thereabouts.

3 It appears by the chief clerk's certificate, dated the day of 18 , that persons have been settled on the list of contributories of the said company, in respect of the total number of shares.

4. For the purpose of satisfying the several debts and liabilities of the said company, and of paying the costs, charges, and expenses of and incidental to the winding up the affairs thereof, I believe the sum of £ will be required, in addition to the amount of the assets of the said company mentioned in the said Schedule A, and the said sum of £ .

5. In order to provide the said sum of £ , it is necessary to make a call upon the several persons who have been settled on the list of contributories as before mentioned, and having regard to the probability that some of such contributories will partly or wholly fail to pay the amount of such call, I believe that, for the purpose of realizing the amount required as before mentioned, it is necessary that a call of £ per share should be made

Sworn, &c.

No. 34. *Summons for intended Call.* [Rule 33.]

In the matter, &c.

Let all parties concerned attend at my chambers in the Rolls Yard, Chancery Lane [*or*, at No. , Lincoln's Inn], in the county of Middlesex, on day, the day of 18 , at of the clock in the noon, on the hearing of an application on the part of the official liquidator of the above-named company, that a call to the amount of £ per share may be made on all the contributories [*or, if upon any particular class, specify the same*] of the said company.

John Romilly, Master of the Rolls.

or,

X. Y., Vice-Chancellor.

This summons was taken out by A. & B , of , in the county of , solicitors for the said official liquidator.

To Mr. A. B., of &c., a contributory of the said company proposed to be included in the said call.

No. 35. *Advertisement of intended Call.* [Rule 33.]

In the matter, &c.

By direction of the Master of the Rolls [*or*, Vice-Chancellor] Notice is hereby given that the said judge has appointed the day of , 18 , at o'clock in the noon, at his chambers in the Rolls Yard, &c., to make a call on all the contributories of the said company [*or, as the case may be*], and that the official liquidator of the said company proposes that such call shall be for £ per share All persons interested are entitled to attend at such day, hour, and place, to offer objections to such call.

Dated this day of 18 .

G. H.,
Chief Clerk.

No. 36. *General Order for a Call.* [Rule 34.]

Master of the Rolls [*or*, Vice- the day of
Chancellor] at { 18
chambers. } In the matter, &c

Upon the application of the official liquidator of the above-named company, and upon reading two orders, dated the day of 18 , and the day of 18 , the chief clerk's certificate, dated the day of 18 , an affidavit of the said official liquidator, filed 18 , and the exhibit marked A therein referred to, and an affidavit of filed 18 , It is ordered, that a call of pounds per share be made on all the contributories of the said company [*or, as the case may be*]. And it is ordered, that each such contributory do, on or before the day of 18 , pay into the Bank of England to the account of the official liquidator of the company, the amount which will be due from him or her in respect of such call.

No. 37. *Notice to be served with the General Order for a Call.*

[Rule 34.]

In the matter, &c.

The amount due from you, A. B., in respect of the call made by the above [*or*, within] order, is the sum of £ , which sum is to be paid by you into the Bank of England, to the account mentioned in the said order. You can pay the same in person, or through a banker or other agent; but this notice and copy order must be produced at the bank upon such payment, and the cashier of the bank will, upon receiving the same, deliver to you a certificate of the payment in, numbered , signed by the said cashier. In order to prevent proceedings being taken against you for non-payment, you must, immediately upon such payment in, cause written notice of the payment, and of the date thereof to be given to me as the official liquidator of the said company, at my office, No. Street, in the county of Middlesex.

Dated this day of 18 .

R. P. H., Official Liquidator.

To Mr. A. B.

No. 38. *Affidavit in Support of Application for Order for Payment of Call due from Contributories.* [Rule 35.].

In Chancery.

In the matter, &c.

I, R. P. H., of, &c., the official liquidator of the above-named company, make oath, and say as follows:—

1. None of the contributories of the said company whose names are set forth in the Schedule hereunto annexed, marked A, have paid, or caused to be paid, the respective sums set opposite their respective names in the said Schedule, and which sums are the respective amounts now due from them respectively in respect of the call of £ per share, in pursuance of the order of the judge in that behalf, dated the day of 18 .

2. The respective amounts or sums set opposite the names of such contributories respectively in such Schedule, are the true amounts due and owing by such contributories respectively in respect of the said call.

Sworn, &c.

A.

THE SCHEDULE ABOVE REFERRED TO.

No. on List	Name.	Address.	Description.	In what Character included	Amount due.
					£ s. d.

NOTE.—*In addition to the above Affidavit, an Affidavit of the service of the Order and Notice (Nos. 36 and 37) will be required.*

No. 39. *Order for Payment of Call due from a Contributory.*

[Rule 35.]

The Master of the Rolls [*or* Vice-Chancellor] at chambers. day, the day of , 18 .

In the matter, &c.

Upon the application of the official liquidator of the above-named company, and upon reading the order, dated the day of , 18 , an affidavit of filed the day of , 18 , and an

affidavit of the said official liquidator, filed the day of 18 , It is ordered, that C. D., of, &c. [*or*, E. F., of, &c., the legal personal representative of L. M., late of, &c., deceased], one of the contributories of the said company [*or*, *if against several contributories*, the several persons named in the second column of the Schedule to this order, being respectively contributories of the said company] do, on or before the day of , 18 , or within four days after service of this order, pay into the Bank of England, to the account of the official liquidator of the company [*or*, to A. B., the official liquidator of the said company, at his office, No. Street, in the county of Middlesex, the sum of £ [*if against a legal personal representative, add*], out of the assets of the said L. M., deceased, in his hands as such legal personal representative as aforesaid, to be administered in a due course of administration, if the said E. F. has in his hands so much to be administered; [*or*, *if against several contributories*, the several sums of money set opposite to their respective names in the sixth column of the said Schedule hereto], such sum [*or* sums] being the amount [*or* amounts] due from the said C. D. [*or* L. M.] [*or*, the said several persons respectively] in respect of the call of £ per share made by the said order dated the day of , 18 .

THE SCHEDULE REFERRED TO IN THE FOREGOING ORDER.

No on List	Name	Address	Description	In what Character included.	Amount due
					£ s d.

NOTE.—*The copy for service of the above Order must be endorsed, as required by the 23rd Consol. Order, rule* 10.

No. 40. *Notice to be endorsed on, or served with every Order directing the Payment of Money into the Bank of England.*

[Rule 39.]

You can make the payment directed by the within [*or*, above] order at the Bank of England in person, &c. [*as in the Form No.* 37].

R. P. H., Official Liquidator.

To Mr.

No. 41. *Certificate of Payment of Money into the Bank of England.*

[Rule 39.]

In the matter, &c.

No.

day of , 18 .

I hereby certify that C. D., of, &c, has this day paid into the Bank of England the sum of , to be placed to the credit of the official liquidator of the company, pursuant to an order dated the day of , 18 .

For the Governor and Company of the Bank of England,

£ H. M., Cashier.

No. 42. *Affidavit of Service of Order for Payment of Call.*

[Rule 35]

In Chancery.

In the matter, &c.

I, J. B., of, &c., make oath, and say as follows:—

1. I did, on the day of , 18 , personally serve G. F., of , in the county of , &c., with an order made in this matter by his Honour the Master of the Rolls [*or*, Vice-Chancellor], dated the day of , 18 , whereby it was ordered [*set out the order in the past tense*] by delivering to and leaving with the said G. F., at , in the county of , a true copy of the said order, and at the same time producing and showing unto him, the said G. F., the said original order duly entered.

2. There was endorsed on the said copy, when so served, the following words, that is to say, "If you, the within-named G. F., neglect to obey this order by the time therein limited, you will be liable to be arrested under a writ of attachment issued out of the High Court of Chancery, or by the Serjeant-at-arms attending the same court, and also be liable to have your estate sequestered for the purpose of compelling you to obey the same order."

Sworn, &c.

No. 43. *Affidavit of Non-payment of Money by Order directed to be paid into the Bank of England.*

[Rule 40.]

In Chancery.

In the matter, &c.

I, R. P. H., of, &c., the official liquidator of the above-named company, make oath and say as follows :—

1. G. F., the person named in an order made in this matter by his Honour the Master of the Rolls [*or*, Vice-Chancellor .], dated the day of , 18 , has not paid into the Bank of England, to the account of the official liquidator of the company, the whole or any part of the sum of £ as by the said order directed.

[*Or, in the case of several parties.*]

1. None of the several persons whose names and addresses are set forth in the Schedule hereunder written, and who have respectively been duly served with orders made in this matter by his Honour the Master of the Rolls [*or*, Vice-Chancellor], of the respective dates set opposite to their respective names in the said Schedule, have paid into the Bank of England, to the account of the official liquidator of the company, the whole or any part of the several sums of money set opposite to their respective names in the said Schedule hereunder written, as by the said orders respectively directed.

2. I am enabled to depose to such non-payment, by reason of my having this day ascertained, by inquiry at the said bank, that such payment [*or*, payments] has [*or*, have] not been made, and seen the certificate of pay-

ment in, numbered [*or*, several certificates of payment in, the numbers whereof respectively are set forth in the sixth column of the said Schedule, opposite the names of the said respective persons, being certificates] furnished by me to the cashier of the said bank for delivery to the said G. F. [*or*, several persons respectively] upon such payment [*or*, payments] being made, still in the hands of the cashier of the said bank. No notice [*or*, notices] of such payment [*or*, payments] having been made has [*or*, have] been given to me by the said G. F. [*or*, several persons respectively.] Sworn, &c.

THE SCHEDULE ABOVE REFERRED TO.

Name.	Address.	Description.	Amount.	Date of Balance Order.	Number of Certificate.
			£ s. d		

No. 44. *Request to invest Cash in Government Stock or Exchequer Bills.*

[Rule 43.]

In the matter, &c.

To the Governor and Company of the Bank of England.

Gentlemen,

It appearing that the sum of £ cash is standing to the credit of the account of the official liquidator of the above-named company, you are hereby requested to invest the sum of £ , part thereof in the

purchase of Bank 3*l.* per Cent. Annuities [*or*, Reduced 3*l.* per Cent. Annuities, *or*, New 3*l.* per Cent. Annuities, *or*, New 2*l.* 10*s.* per Cent. Annuities] in the name of R. P. H., of, &c., the official liquidator of the said company, [*or*, in the purchase of Exchequer bills, and to deposit such Exchequer bills in the Bank of England, in the name and on behalf of the said official liquidator]. The said Annuities [*or*, Exchequer bills] are not to be sold transferred or otherwise dealt with, except upon a direction for that purpose signed by the official liquidator of the said company, and countersigned by the chief clerk of the Master of the Rolls [*or*, Vice-Chancellor], or under an order to be made by the said judge.

Dated this day of , 18 .

I am, gentlemen,

Your most obedient servant,

R. P. H., Official Liquidator.

Countersigned,
G. H., Chief Clerk of the Master of
the Rolls [*or*, Vice-Chancellor
].

No. 45. *Notice* [*or*, *Advertisement*] *of Meeting of Creditors or Contributories.* [Rules 45, 46.]

In the matter, &c.

Notice is hereby given that the Master of the Rolls [*or*, Vice-Chancellor] has directed a meeting of the creditors [*or*, contributories] of the above-named company to be summoned pursuant to the above statute, for the purpose of ascertaining their wishes as to [*state the object for which meeting called, unless notice is by advertisement, in which case say*, certain matters relating to the winding up of the said company,] and that such meeting will be held on day, the day of 18 , at, o'clock in the noon, at in the county of , at which time and place all the creditors [*or*, contributories] of the said company are requested to attend. [The said judge has appointed H. T., of, &c., to act as chairman of such meeting.]

Dated this day of , 18 .

R. P. H., Official Liquidator.

No. 46. *Appointment of Proxy to vote at a Meeting of Creditors or Contributories.* [Rule 46.]

In the matter, &c.

I, W. S., of , in the county of , being a creditor [*or*, contributory] of the above-named company, hereby appoint of , as my proxy to vote for me, and on my behalf, at the meeting of the creditors [*or*, contributories] of the said company, summoned by direction of the Master of the Rolls [*or*, Vice-Chancellor], to be held on the day of, , and at any adjournment thereof.

As witness my hand this day of 18 .

W. S.

Signed by the said W. S. }
in the presence of }

J. M., of &c.

No. 47. *Memorandum of Appointment of a Person to act as Chairman at Meeting of Creditors or Contributories.* [Rule 47.]

In the matter, &c.

The Master of the Rolls [*or*, Vice-Chancellor] has appointed Mr. H. T., of, &c., one of the creditors [*or*, contributories] of the above-named company, to act as chairman of a meeting of the creditors [*or*, contributories] of the said company, summoned by direction of the said judge, pursuant to the above statute, to be held on day, the day of , 18 , at o'clock, in the noon, at , in the county of , and to report the result of such meeting to the said judge.

The said meeting is summoned for the purpose of ascertaining the wishes of the creditors [*or*, contributories] of the said company, as to [*state the object for which meeting called*]; and at such meeting the votes of the creditors [*or*, contributories] may be given either personally or by proxy.

Dated this day of 18 .

G. H.,
Chief Clerk.

No. 48. *Chairman's Report of Result of Meeting of Creditors or Contributories.* [Rule, 45, 46, 47]

In the matter, &c.

I, H. T, the person appointed by the Master of the Rolls [*or*, Vice-Chancellor] to act as chairman of a meeting of the creditors, [*or*, contributories] of the above named company, summoned by advertisement [*or*, notice], dated the day of , 18 , and held on the day of 18 , at in the county of , do hereby report to the said judge the result of such meeting as follows.

The said meeting was attended, either personally or by proxy, by creditors to whom debts against the said company have been allowed, amounting in the whole to the value of £ [*or*, by contributories, holding in the whole shares in the said company, and entitled respectively, by the regulations of the company, to the number of votes hereinafter mentioned].

The question submitted to the said meeting was, whether the creditors [*or*, contributories] of the said company approved of the proposal of the official liquidator of the said company, that, &c. [*as the case may be*], and wished that such proposal should be adopted and carried into effect

The said meeting was unanimously of opinion that the said proposal should [*or*, should not] be adopted and carried into effect. [*or*, The result of the voting upon such question was as follows —

The undermentioned creditors [*or*, contributories] voted in favour of the said proposal being adopted and carried into effect:

Name of Creditor [*or*, Contributory]	Address	Value of Debt [*or*, Number of Shares]	Number of Votes conferred on each Contributory by the Regulations of the Company

The undermentioned creditors [*or*, contributories] voted against the said proposal being adopted and carried into effect :—

Name of Creditor [*or*, Contributory]	Address.	Value of Debt [*or*, Number of Shares.]	Number of Votes conferred on each Contributory by the Regulations of the Company.

Dated this day of 18 .

(Signed) H. T.,
Chairman.

No. 49. *Memorandum of Sanction of Judge to accepting Bill of Exchange.*
[Rule 48.]

In the matter, &c.

The Master of the Rolls [*or*, Vice-Chancellor] has sanctioned the acceptance of this bill of exchange by the official liquidator, on behalf of the said company.

G. H.,
Chief Clerk.

No. 50. *Memorandum of Agreement of Compromise with a Contributory.*
[Rule 49.]

In the matter, &c.

Memorandum of agreement, entered into this day of 18 , between R. P. H., of, &c., the official liquidator of the above-named company of the one part, and S. B., of, &c., one of the contributories of the said company, of the other part.

Whereas the said S. B. has been settled on the list of contributories of the said company as a contributory in respect of shares in the said company, and whereas, by an order made by the Master of the Rolls [*or*, Vice-Chancellor], dated the day of 18 , a call of £ per share was made on all the contributories of the said company, and there is now due from the said S. B. to the said company the sum of £ in respect of the said call: And whereas the said S. B. has proposed to pay to the said official liquidator the sum of £ by way of compromise, and in satisfaction and discharge of the said sum of £ , and of all liability whatsoever, as a contributory of the said company: And whereas the said official liquidator, having investigated the affairs of the said S. B., and believing that such compromise will be beneficial to the said company, hath, in exercise of the power for that purpose given to him by the above statute, agreed to accept the same, subject to the sanction of the said judge and to the conditions and agreements hereinafter contained: Now it is hereby agreed by and between the said parties hereto:

1st. That the said official liquidator shall, before the day of next, apply to the said judge at chambers to sanction this agreement of compromise.

2nd. That upon this agreement being sanctioned by the said judge, the said S. B. shall, within days next after such sanction, pay to the said official liquidator the said sum of £ , and when thereto required, shall do and execute all such acts and deeds as may be necessary for transferring, or surrendering and releasing, to the said official liquidator on behalf of the said company, or in such manner as the said judge may direct, the said shares held by the said S. B. in the said company, and all claim and demand whatsoever which the said S. B. has, or may have, against the said company in respect of the said shares, or the distribution of the assets of the said company, or otherwise howsoever.

3rd. That the said sum of £ , and the transfer or surrender and release of the said shares and interest of the said S. B. as aforesaid, shall be accepted by the said official liquidator as, and be deemed and taken to give to the said S. B., a full and complete discharge from all calls and liabilities, claims and demands whatsoever, which the said company, or the official liquidator thereof now has, or may hereafter have, or be entitled to

against the said S. B., in respect of his being or having been the holder of the said shares, or otherwise, as a contributory of the said company.

4th. That in case this agreement shall not be sanctioned by the said judge it shall cease and determine, and the said official liquidator and the said S. B. shall be remitted to their original rights with respect to each other, as if this agreement had not been entered into.

5th. That in case this agreement shall be sanctioned by the said judge, and the said S. B. shall not in all respects perform the same on his part, the official liquidator shall be at liberty, with the sanction of the said judge, and without notice to the said S. B., to enforce the performance thereof, or, with the like sanction, to give notice to the said S. B., that he abandons this agreement, whereupon the same shall cease and determine, and the said official liquidator shall be entitled to proceed against the said S. B., to enforce payment of the said sum of £ , or so much thereof as shall then remain due and unpaid, as if this agreement had not been entered into.

R. P. H., Official Liquidator.
S. B.

Witness to the signatures of the said R. P. H. and S. B., C. D., of, &c.

No. 51. *Memorandum of Sanction of Judge to Agreement of Compromise.* [Rule 49.]

In the matter, &c.

The Master of the Rolls [*or*, Vice-Chancellor] has sanctioned this agreement of compromise.

G. H.,
Chief Clerk.

No. 52. *Order or Memorandum of the Sanction of the Judge for certain Acts to be done by the Official Liquidator.* [Rule 50.]

The Master of the Rolls [*or*, Vice Chancellor] at chambers. day of 18
In the matter, &c.

The Master of the Rolls [*or*, Vice-Chancellor] doth hereby sanction [*or*, has sanctioned] the following proceedings being taken [*or*, acts being done] by the official liquidator of the above-named company, namely [*state the proceedings to be taken or acts to be done as*], the bringing [*or*, instituting] and prosecuting an action at law [*or*, suit in equity], in the name and on behalf of the said company, against [*or*, defending] an action at law [*or*, suit in equity] brought [*or*, instituted] against the said company by K. M., of, &c., to recover a debt or sum of £ alleged to be due from [*or*, to] the said K. M. to [*or*, from] the said company, &c.

G. H.,
Chief Clerk.

No. 53. *Appearance Book.* [Rule 62.]

In the matter, &c.

Appearance Book.

Date when Appearance entered.	Party's Name.	Whether Creditor or Contributory	If he appears in person his Address for service.	If he appears by a Solicitor, his Solicitor's Name.	Solicitor's Address.	Amount of Debt [*or*, Number of Shares.]

No. 54. *Summons for Persons to attend at Chambers to be examined.* [25 & 26 Vict. c. 89, s. 115.]

In Chancery.

In the matter, &c.

A. B., of, &c., and E. F., of, &c., are hereby severally summoned to attend

at the Chambers of the Master of the Rolls [*or*, Vice-Chancellor], in the Rolls Yard, Chancery Lane [*or*, No. Lincoln's Inn], in the county of Middlesex, on day of , 18 , at of the clock in the noon, to be examined on the part of the official liquidator [*or*, of W. D , of, &c.], for the purpose of proceedings directed by the Master of the Rolls [*or*, the said Vice-Chancellor] to be taken before me in the above matter. And the said A. B. is hereby required to bring with him and produce, at the time and place aforesaid, a certain indenture [*describe documents*], and all other books, papers, deeds, writings, and other documents in his custody or power in anywise relating to the above-named company.

Dated this day of , 18 .

G. H.,
Chief Clerk.

This summons was taken out by Messrs. C. & D., of , in the county of , solicitors for the official liquidator [*or*, for the said W. D.].

No. 55. *Certificate of the Company being completely wound up, and of the Official Liquidator having passed his final Account.* [Rule 66.]

In the matter, &c.

In pursuance of the directions given to me by the Master of the Rolls [*or*, Vice-Chancellor], I hereby certify that R. P. H., the official liquidator of the above-named company, has passed his final account as such official liquidator, and that the balance of £ thereby certified to be due to [*or*, from] the said official liquidator has been paid in the manner directed by the order dated the day of 18 , and that the affairs of the said company have been completely wound up.

The evidence produced, &c.

Dated this day of , 18 .

G. H.,
Chief Clerk.

Approved the
day of , 18 .

No. 56. *Order to dissolve the Company.* [Rule 66.]

The Master of the Rolls [*or*, Vice-Chancellor] at chambers. } the day of 18 , In the matter, &c.

Upon the application of the official liquidator of the above-named company, and upon reading an order dated the day of, , and the chief clerk's certificate, dated the day of , whereby it appears that the affairs of the said company have been completely wound up, and that the balance of £ , due from [*or*, to] the official liquidator, has been paid in manner directed by the said order, it is ordered that the said company be dissolved, as from this day of , 18 , and that the recognizance dated the day of 18 , entered into by the said official liquidator, together with W. B. and T. P., his sureties, be vacated.

ORDER OF COURT.

Saturday, the 21st day of March, 1868 (*a*).

GENERAL ORDER AND RULES OF THE HIGH COURT OF CHANCERY TO REGULATE THE MODE OF PROCEEDING UNDER THE COMPANIES ACT, 1867.

THE RIGHT HONORABLE HUGH MACCALMONT BARON CAIRNS, Lord High Chancellor of Great Britain, with the advice and consent of the RIGHT HONORABLE JOHN LORD ROMILLY, Master of the Rolls, the HONORABLE the VICE-CHANCELLOR SIR JOHN STUART, and the HONORABLE the VICE-CHANCELLOR SIR RICHARD MALINS, doth hereby, in pursuance and execution of the powers given to him by "The Companies' Act, 1867," and of all other powers and authorities enabling him in that behalf, order and direct in manner following:—

Petitions for Winding-up.

1. Every petition which shall after this order comes into operation be presented for the winding-up of any company by the court, or subject to the supervision of the court, and all notices, affidavits, and other proceedings under such petition, shall be intituled in the matter of "The Companies' Acts, 1862 and 1867," and of the company to which such petition shall relate.

Where the words "and 1867" were omitted, the petition was ordered to stand over for the purpose of being re-advertised. *Marazzo Marble Co.*, 22 W. R. 248.

(*a*) Rules 8 and 14 have been amended by an order of the 2nd of March, 1869; they are here printed as amended

Petition to Reduce Capital.

2. Every petition for an order confirming a special resolution for reducing the capital of a company, and all notices, affidavits, and other proceedings under such petition, shall be intituled in the matter of "The Companies' Act, 1867," and of the company in question.

3. No such petition as mentioned in the 2nd rule of this order shall be placed in the list of petitions by the secretary of the Lord Chancellor or Master of the Rolls, as the case may be, until after the expiration of eight clear days from the filing of such certificate as is mentioned in the 14th rule of this order.

4. When any such petition as last aforesaid has been presented, application may be made, *ex parte* by summons in chambers, to the judge to whose court the petition is attached, for directions as to the proceedings to be taken for settling the list of creditors entitled to object to the proposed reduction, and the judge may thereupon fix the date with reference to which the list of such creditors is to be made out, pursuant to the 13th section of the Companies' Act, 1867; and may, either at the same time or afterwards, as he shall think fit, give such directions as are mentioned in the 5th and 6th rules of this order. The order upon such summons may be in the form No. 1 in the schedule hereto, with such variations as the circumstances of the case may require.

5. Notice of the presentation of the petition shall be published at such times, and in such newspapers as the judge shall direct, so that the first insertion of such notice be made not less than one calendar month before the day of the date fixed as mentioned in the 4th rule of this order. Such notice may be in the form No. 2 in the schedule hereto, with such variations as the circumstances of the case may require.

6. The company shall, within such time as the judge shall direct, file in the office of the clerks of records and writs, an affidavit made by some officer or officers of the company competent to make the same, verifying a list containing the names and addresses of the creditors of the company at the date fixed as mentioned in the 4th rule of this order, and the amounts due to them respectively, and leave the said list and an office copy of such affidavit, at the chambers of the judge.

7. The person making such affidavit shall state therein his belief that

such list is correct, and that there was not at the date so fixed as aforesaid any debt or claim, which if that date were the commencement of the winding-up of the company, would be admissible in proof against the company, except the debts set forth in such list, and shall state his means of knowledge of the matters deposed to in such affidavit. Such affidavit may be in the form No. 3 in the schedule hereto, with such variations as the circumstances of the case may require.

8. Copies of such list [containing the names and addresses of the creditors, and the total amount due to them, but omitting the amounts due to them respectively or (as the judge shall think fit) complete copies of such list] shall be kept at the registered office of the company and at the offices of their solicitors and London agents (if any), and any person desirous of inspecting the same may at any time during the ordinary hours of business, inspect and take extracts from the same on payment of the sum of one shilling.

The words in brackets were introduced by the Order of March, 1869.

9. The company shall, within seven days after the filing of such affidavit, or such further time as the judge may allow, send to each creditor whose name is entered in the said list, a notice stating the amount of the proposed reduction of capital, and the amount of the debt for which such creditor is entered in the said list, and the time (such time to be fixed by the judge) within which, if he claims to be a creditor for a larger amount, he must send in his name and address, and the particulars of his debt or claim, and the name and address of his solicitor (if any) to the solicitor of the company; and such notice shall be sent through the post in a pre-paid letter addressed to each creditor at his last known address or place of abode, and may be in the form or to the effect of the form No. 4, set forth in the schedule hereto, with such variations as the circumstances of the case may require.

10. Notice of the list of creditors shall, after the filing of the affidavit mentioned in the 6th of these rules, be published at such times, and in such newspapers, as the judge shall direct. Every such notice shall state the amount of the proposed reduction of capital, and the places where the aforesaid list of creditors may be inspected, and the time within which creditors of the company who are not entered on the said list, and are desirous

of being entered therein, must send in their names and addresses, and the particulars of their debts or claims, and the names and addresses of their solicitors (if any) to the solicitor of the company; and such notice may be in the form No. 5, set forth in the said schedule hereto, with such variations as the circumstances of the case may require.

11. The company shall, within such time as the judge shall direct, file in the office of the clerks of records and writs an affidavit made by the person to whom the particulars of debts or claims are by such notices as are mentioned in the 9th and 10th rules of this order, required to be sent in, stating the result of such notices respectively, and verifying a list containing the names and addresses of the persons (if any), who shall have sent in the particulars of their debts or claims in pursuance of such notices respectively, and the amounts of such debts or claims, and some competent officer or officers of the company shall join in such affidavit, and shall in such list distinguish which (if any) of such debts and claims are wholly or as to any and what part thereof, admitted by the company, and which (if any) of such debts and claims are wholly, or as to any and what part thereof disputed by the company. Such affidavit may be in the form No. 6 in the schedule hereto, with such variations as the circumstances of the case may require; and such list, and an office copy of such affidavit, shall, within such time as the judge shall direct, be left at the chambers of the judge.

12. If any debt or claim, the particulars of which are so sent in, shall not be admitted by the company at its full amount, then, and in every such case, unless the company are willing to set apart and appropriate in such manner as the judge shall direct the full amount of such debt or claim, the company shall, if the judge think fit so to direct, send to the creditor a notice that he is required to come in and prove such debt or claim, or such part thereof as is not admitted by the company, by a day to be therein named, being not less than four clear days after such notice, and being the time appointed by the judge for adjudicating upon such debts and claims, and such notice shall be sent in the manner mentioned in the 9th rule of this order, and may be in the form No. 7, in the schedule hereto, with such variations as the circumstances of the case may require.

13. Such creditors as come in to prove their debts or claims in pursuance of any such notice as is mentioned in the 12th of these rules, shall

be allowed their costs of proof against the company, and be answerable for costs, in the same manner as in the case of persons coming in to prove debts under a decree in a cause.

14. The result of the settlement of the list of creditors shall be stated in a certificate by the chief clerk, and such certificate shall state what debts or claims (if any) have been disallowed, and shall distinguish the debts or claims the full amount of which the company are willing to set apart and appropriate, and the debts or claims (if any) the amount of which has been fixed by inquiry and adjudication in manner provided by section 14 of the said Act, and the debts or claims (if any) the full amount of which is not admitted by the company, nor such as the company are willing to set apart and appropriate, and the amount of which has not been fixed by inquiry and adjudication as last aforesaid; and shall show which of the creditors have consented in writing to the proposed reduction [and the total amount of the debts or claims, the payment of which has been secured in manner provided by the said 14th section, and the persons to or by whom the same are due or claimed, but it shall not be necessary to show in such certificate the several amounts of the debts or claims of any persons who have consented in writing to the proposed reduction or the payment of whose debts or claims have been secured as aforesaid].

The words in brackets were introduced by the Order of March, 1869.

15. After the expiration of eight clear days from the filing of such last mentioned certificate, the petition may be placed in the list of petitions upon a note from the chief clerk to the secretary of the Lord Chancellor or of the Master of the Rolls, as the case may be, stating that the certificate has been filed and become binding.

16. Before the hearing of the petition, notices stating the day on which the same is appointed to be heard shall be published at such times and in such newspapers as the judge shall direct. Such notices may be in the form No. 8, in the schedule hereto, with such variations as the circumstances of the case may require.

17. Any creditor settled on the said list whose debt or claim has not before the hearing of the petition, been discharged or determined, or been secured in manner provided by the 14th section of the said Act, and who has not, before the hearing, signed a consent to the proposed reduction of capital, may, if he think fit, upon giving two clear days notice to the

solicitor of the company of his intention so to do, appear at the hearing of the petition and oppose the application.

18. Where a creditor who appears at the hearing under the last preceding rule, is a creditor the full amount of whose debt or claim is not admitted by the company, and the validity of such debt or claim has not been inquired into and adjudicated upon under section 14 of the said Act, the costs of and occasioned by his appearance shall be dealt with as to the court shall seem just, but in all other cases a creditor appearing under the last preceding rule shall be entitled to the costs of such appearance, unless the court shall be of opinion that in the circumstances of the particular case his costs ought not to be allowed.

19. When the petition comes on to be heard, the court may, if it shall so think fit, give such directions as may seem proper with reference to the securing in manner mentioned in section 14 of the said Act the payment of the debts or claims of any creditors who do not consent to the proposed reduction; and the further hearing of the petition may, if the court shall think fit, be adjourned for the purpose of allowing any steps to be taken with reference to the securing in manner aforesaid the payment of such debts or claims.

20. Where the court makes an order confirming a reduction, such order shall give directions in what manner, and in what newspapers, and at what times, notice of the registration of the order and of such minute as mentioned in the 15th section of "The Companies' Act, 1867," is to be published: and shall fix the date until which the words "and reduced" are to be deemed part of the name of the company as mentioned in the 10th section of the same Act.

See note to s. 10 of the Act of 1867. *Credit Foncier of England*, 11 Eq. 356.

Fees.

21. Solicitors shall be entitled to charge and be allowed for duties performed under "The Companies' Act, 1867," the same fees as they shall for the time being be entitled to charge, and be allowed for the like duties performed under "The Companies' Act, 1862," unless the court or judge shall otherwise specially direct.

Rules of 1862, Rule 70 and Sched. I.

22. The same fees of court shall be paid in relation to proceedings in Chancery under "The Companies' Act, 1867," as shall for the time being be payable in relation to like proceedings in Chancery under "The Companies' Act, 1862," and shall be collected by stamps in manner provided by the general orders of the court.

Rules of 1862, Rule 71 and Sched. II.

General Directions.

23. The general orders and practice of the court, including the course of proceeding and practice in the Judges' chambers, shall, in cases not provided for by "The Companies' Act, 1867," or these rules, so far as such orders and practice are applicable and not inconsistent with the said Act or with these rules, apply to all proceedings in the Court of Chancery under the said Act.

24. The power of the court and of the judge sitting in chambers to enlarge or abridge the time for doing any act or taking any proceeding, to adjourn or review any proceeding, and to give any direction as to the course of proceedings, shall be the same in proceedings under "The Companies' Act, 1867," as in proceedings under the ordinary jurisdiction of the Court.

Commencement of Order.

25. This order shall take effect and come into operation on the 15th day of April, 1868, and shall apply to all proceedings in Chancery under the said Act, whether commenced before or after that day, but every proceeding taken under the said Act before that day shall have the same validity as it would have had if this order had not been made.

Interpretation.

26. The general interpretation clause of the consolidated general orders shall be deemed to extend and apply to the rules of this order, and this order shall be deemed a general order of this court.

CAIRNS, C.
ROMILLY, M. R
JOHN STUART, V.C.
RICHARD MALINS, V.C.

THE SCHEDULE.

No. 1. *Form of Order.* [Rule 4].

The Master of the Rolls [*or* Vice-Chancellor Sir at Chambers.] } In the matter of The Company, Limited and Reduced; and in the Matter of "The Companies' Act, 1867."

Upon the application of the petitioners by summons, dated , and upon hearing the solicitor for the petitioners, and on reading the petition on the day of , preferred unto the Right Honorable the Lord High Chancellor of Great Britain [*or*, Master of the Rolls], it is ordered that an inquiry be made what are the debts, claims, and liabilities of or affecting the said company on the day of , 18 , and that notice of the presentation of the said petition be inserted in [the newspapers] on the day of and [other times of insertion], and that a list of the persons who are creditors of the company on the said day of , and an office copy of the affidavit verifying the same be left at the chambers of the judge on or before the day of

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No. 2. [See Rule 5.]

In the Matter of The Company Limited and Reduced; and in the Matter of "The Companies' Act, 1867."

Notice is hereby given, that a petition for confirming a resolution reducing the capital of the above company from £ to £ was on the day of presented to [the Lord

Chancellor, *or* the Master of the Rolls], and is now pending; and that the list of creditors of the company is to be made out as for the day of , 18 .

C. and D. of [Agents for A. and B., of]
Solicitors to the Company.

No. 3. *Affidavit verifying List of Creditors.* [Rule 7.]

In Chancery.

In the matter of The Company, Limited and Reduced; and in the matter of "The Companies Act, 1867."

I, A. B., of &c., make oath and say as follows:—

1. The paper writing now produced and shown to me, and marked with the letter A., contains a list of the creditors of and persons having claims upon the said company on the day of , 18 (the date fixed by the order in this matter, dated), together with their respective addresses, and the nature and amount of their respective debts or claims, and such list is, to the best of my knowledge, information, and belief, a true and accurate list of such creditors and persons having claims on the day aforesaid.

2. To the best of my knowledge and belief there was not, at the date aforesaid, any debt or claim which, if such date were the commencement of the winding-up of the said company, would be admissible in proof against the said company other than and except the debts set forth in the said list. I am enabled to make this statement from facts within my knowledge as the of the said company, and from information derived upon investigation of the affairs and the books, documents, and papers of the said company.

Sworn, &c.

List of Creditors referred to in the last Form.

A.

In the matter, &c.

This list of creditors marked A. was produced and shown to A. B., at

Chancellor, *or* the Master of the Rolls], and is now pending; and that the list of creditors of the company is to be made out as for the day of , 18 .

C. and D. of [Agents for A. and B., of].
Solicitors to the Company.

No. 3. *Affidavit verifying List of Creditors.* [Rule 7.]

In Chancery.

In the matter of The Company, Limited and Reduced; and in the matter of "The Companies Act, 1867."

I, A. B., of &c., make oath and say as follows:—

1. The paper writing now produced and shown to me, and marked with the letter A., contains a list of the creditors of and persons having claims upon the said company on the day of , 18 (the date fixed by the order in this matter, dated), together with their respective addresses, and the nature and amount of their respective debts or claims, and such list is, to the best of my knowledge, information, and belief, a true and accurate list of such creditors and persons having claims on the day aforesaid.

2. To the best of my knowledge and belief there was not, at the date aforesaid, any debt or claim which, if such date were the commencement of the winding-up of the said company, would be admissible in proof against the said company other than and except the debts set forth in the said list. I am enabled to make this statement from facts within my knowledge as the of the said company, and from information derived upon investigation of the affairs and the books, documents, and papers of the said company.

Sworn, &c.

List of Creditors referred to in the last Form.

A.

In the matter, &c.

This list of creditors marked A. was produced and shown to A. B., an

is the same list of creditors as is referred to in his affidavit sworn before me this day of 18 .

X. Y., &c.

Names, Addresses, and Description of the Creditors	Nature of Debt or Claim	Amount of Debt or Claim.

No. 4. [See Rule 9.]

In the matter of The Company, Limited and Reduced; and in the matter of "The Companies Act, 1867."

To Mr.

You are requested to take notice that a petition has been presented to the Court of Chancery to confirm a special resolution of the above company, for reducing its capital to £ , and that in the list of persons admitted by the company, to have been on the day of , creditors of the company, your name is entered as a creditor [here state the amount of the debt or nature of the claim].

If you claim to have been on the last-mentioned day a creditor to a larger amount than is stated above, you must on or before the day of , send in the particulars of your claim, and the

name and address of your solicitor (if any), to the undersigned at . In default of your so doing, the above entry in the list of creditors will in all the proceedings under the above application to reduce the capital of the company be treated as correct.

Dated this day of , 18 .

A. B.,
Solicitor for the said Company.

No. 5. [See Rule 10.]

In the matter of The Company, Limited and Reduced; and in the matter of "The Companies Act, 1867."

Notice is hereby given, that a petition has been presented to the Court of Chancery for confirming a resolution of the above company, for reducing its capital from $ to £ . A list of the persons admitted to have been creditors of the company on the day of , 18 , may be inspected at the offices of the company at , or at the office of , at any time during usual business hours, on payment of the charge of one shilling.

Any person who claims to have been on the last-mentioned day and still to be a creditor of the company, and who is not entered on the said list and claims to be so entered, must on or before the day of , send in his name and address, and the particulars of his claim, and the name and address of his solicitor (if any), to the undersigned, at , or in default thereof he will be precluded from objecting to the proposed reduction of capital.

Dated this day of , 18 .

A. B.,
Solicitor for the said Company.

No. 6. [Rule 11.]

In Chancery.

In the matter of The Company, Limited and Reduced; and in the matter of "The Companies Act, 1867."

We, C. D., of &c., [the secretary of the said company], E. F., of &c. [the solicitor of the said company], and A. B., of &c. [the managing director of the said company], severally make oath and say as follows:—

I, the said C. D., for myself, say as follows:—

[Rule 9] 1 I did, on the day of , 18 , in the manner hereinafter mentioned, serve a true copy of the notice now produced and shown to me, and marked B., upon each of the respective persons whose names, addresses, and descriptions appear in the first column of the list of creditors marked A., referred to in the affidavit of , filed on the day of , 18 .

2. I served the said respective copies of the said notice by putting such copies respectively duly addressed to such persons respectively, according to their respective names and addresses appearing in the said list (being the last known addresses or places of abode of such persons respectively), and with the proper postage stamps affixed thereto as prepaid letters, into the post office, receiving house, No. , in street, in the County of , between the hours of , and of the clock in the noon of the said day of

And I, the said E. F., for myself, say as follows:—

If notice issued under Rule 10 3. A true copy of the notice now produced and shown to me, and marked C., has appeared in the of the day of , 18 , the of the day of , 18 , &c.

Rule 11.] 4. I have, in the paper writing now produced and shown to me, and marked D., set forth a list of all claims, the particulars of which have been sent in to me pursuant to the said notice B.

now produced and shown to me by persons claiming to be creditors of the said company for larger amounts than are stated in the list of creditors marked A., referred to in the affidavit of , filed on the day of 18 .

5. I have in the paper writing now produced and shown to me, marked E., set forth a list of all claims, the particulars of which have been sent in to me pursuant to the notice referred to in the third paragraph of this affidavit by persons claiming to be creditors of the said company on the day of , 18 , not appearing on the said list of creditors, marked A., and who claimed to be entered thereon. [If notice issued under Rule 10]

And we, C. D. and A. B., for ourselves, say as follows :—

6. We have in the first part of the said paper writing, marked D. (now produced and shown to us), and also in the first part of the said paper writing, marked E. (also produced and shown to us), respectively set forth such of the said debts and claims as are admitted by the said company to be due wholly or in part, and how much is admitted to be due, in respect of such of the same debts and claims respectively as are not wholly admitted. [Rule 11.]

7. We have, in the second part of each of the said paper writings, marked D. and E., set forth such of the said debts and claims as are wholly disputed by the said company. [Rule 11.]

8. In the said exhibits D. and E. are distinguished such of the debts, the full amounts whereof are proposed to be set apart and appropriated in such manner as the judge shall direct.

Sworn, &c.

Exhibit D., referred to in the last mentioned Affidavit.

D.

In the matter, &c.

List of debts and claims of which the particulars have been sent in to by persons claiming to be creditors of the said

company for *larger amounts* than are stated in list of creditors made out by the company.

This paper writing, marked D., was produced and shown to C. D., E. F., and A. B., respectively, and is the same as is referred to in their affidavit sworn before me this day of , 18 .

X. Y., &c.

FIRST PART.

Debts and Claims wholly or partly admitted by the Company.

Names, Addresses, and Descriptions of Creditors	Particulars of Debt or Claim.	Amount claimed.	Amount admitted by the Company to be owing to Creditor	Debts proposed to be set apart and appropriated in full although disputed

SECOND PART.

Debts and Claims wholly disputed by the Company.

Names, Addresses, and Descriptions of Claimants.	Particulars of Claim	Amount claimed	Debts proposed to be set apart and appropriated in full although disputed

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Exhibit E., referred to in the last Affidavit.

E.

In the matter, &c.

Lists of debts and claims of which the particulars have been sent in to Mr. by persons claiming to be creditors of the company, and to be entered on the list of the creditors made out by the company.

This paper writing, marked E., was produced and shown to C. D., E. F., and A. B., respectively, and is the same as is referred to in their affidavit, sworn before me, this day of , 18

X. Y., &c.

FIRST PART.

[Same as in Exhibit D.]

SECOND PART.

[Same as in Exhibit D.]

NOTE.—The names are to be inserted alphabetically.

No. 7. [See Rule 12.]

In the matter of the Company, Limited and Reduced · and in the matter of "The Companies Act, 1867."

To Mr.

You are hereby required to come in and prove the debt claimed by you against the above company, by filing your affidavit and giving notice thereof to Mr. , the solicitor of the company, on or before the day of next; and you are to attend by your solicitor at the chambers of [the Master of the Rolls, in the Rolls Yard, Chancery Lane, *or* the Vice-Chancellor at No. , Lincoln's Inn], in the county of Middlesex, on the day of , 18 , at o'clock in the noon, being the time appointed for hearing and adjudicating upon the claim, and produce any securities or documents relating to your claim.

In default of your complying with the above directions, you will [be precluded from objecting to the proposed reduction of the capital of the company], *or* [in all proceedings relative to the proposed reduction of the capital of the company, be treated as a creditor for such amount only as is set against your name in the list of creditors].

Dated this day of , 18 .

A. B.,

Solicitor for the said Company.

No. 8. [See Rule 16.]

In the matter of the Company, Limited and Reduced; and in the matter of "The Companies Act, 1867."

Notice is hereby given, that a petition presented to the [Lord Chancellor] *or* [the Master of the Rolls], on the day of for confirming a resolution reducing the capital of the above company from £ to £ , is directed to be heard before [the Vice-Chancellor] *or* [the Master of the Rolls], on the day of , 18 .

C. and D. of [agents for E. and F. of].
Solicitors for the Company.

CAIRNS, C.
ROMILLY, M.R.
JOHN STUART, V.C.
RICHARD MALINS, V.C.

REGULATION AS TO THE MODE OF REMUNERATING OFFICIAL LIQUIDATORS ADOPTED BY THE MASTER OF THE ROLLS AND THE VICE-CHANCELLORS, AND SANCTIONED AND APPROVED BY THE LORD CHANCELLOR (*a*).

Every application by an official liquidator for remuneration, must be supported by an affidavit showing the number of hours devoted by him and his clerks respectively to the business of the liquidation.

In fixing the amount of the remuneration, the judge will, subject as hereinafter mentioned, be guided by the following scale:—

Liquidators.

				Per day of Eight Hrs.
			£	£
Group A.	Class 1. Where the assets divisible among the unsecured creditors shall not amount to	£	500	1
	„ 2. Where they shall amount to	500 and not	2,000	2
	„ 3. „ „	2,000 „	5,000	3

(*a*) This regulation is printed in L. R. 3 Ch p lxiv

			£		£	Per day of Eight Hrs.
Group B.	Class 4.	Where they shall amount to	5,000	and not	10,000	£4
	„ 5.	„ „	10,000	„	50,000	6
Group C.	„ 6.	„ „	50,000	„	100,000	8
	„ 7.	„ „	100,000	„	500,000	10
	„ 8.	„ „	500,000		and over	12

Clerks.

	1st Class.	2nd Class.	3rd Class.	
Group A.	2s.	1s. 6d.	1s.	per hour.
„ B.	3s.	2s. 6d.	1s.	„
„ C.	3s. 6d.	2s. 6d.	1s.	„

If in the special circumstances of any liquidation it shall at any time, or from time to time, appear to the judge that it is proper to place it on a higher or lower class, he will so place it accordingly.

If it shall appear to the judge that in the special circumstances of any liquidation it is proper to add to or deduct from the amount of remuneration provided by the scale, he will make such addition or deduction accordingly.

If during the progress of a liquidation it shall appear to the judge expedient so to do, he will sanction payments to the liquidator on account of his remuneration.

For this purpose the judge will estimate the amount of such remuneration as well as circumstances will admit, and will pay to the liquidator either the whole of such estimated remuneration or such part thereof as to the judge shall seem reasonable.

COUNTY COURT ORDER FOR REGULATING THE PRACTICE OF THE COUNTY COURTS. 1ST JANUARY, 1868.

Orders under "The Companies Act, 1867." (*a*).

The general order, rules, and forms of the High Court of Chancery, regulating for the time being the mode of proceeding under "The Companies Act, 1862," shall be the orders, rules, and forms in all proceedings in the County Courts for the winding-up of a society registered under "The Industrial and Provident Societies Act, 1862," (*b*) or for the winding up of a company under "The Companies Act, 1867," so far as the same are applicable: Provided that, where it shall appear to the court inconvenient that the Bank of England should be the bank used for the purposes mentioned in the order and rules, it shall be competent for the court to name some bank to be used in lieu of the Bank of England.

A Scale of Costs and Charges to be paid to Counsel and Attorneys under "The Industrial and Provident Societies Act, 1862," *and "The Companies Act,* 1867."

Attorneys shall be entitled to charge and be allowed in proceedings under "The Industrial and Provident Societies Act, 1862," and in proceedings transferred to a County Court under "The Companies Act, 1867," the same costs and charges as they would be allowed in the Court of Chancery, except that where the amount of subscribed capital of the society or company shall not exceed 2,000*l.*, they shall be allowed such costs and charges according to the lower scale authorized by the 2nd Rule of the 38th Consolidated General Order of the Court of Chancery.

(*a*) 30 & 31 Vict. c. 131, ss. 44, 45, 46. This Order is printed in full in W. N., 1868 See pp 38, 40.

(*b*) This Act will be found in App. III.

ORDER OF COMMISSIONERS OF HER MAJESTY'S TREASURY REGULATING FEES IN THE COUNTY COURTS (a).

Proceedings under "THE COMPANIES ACT, 1862."

	£	s.	d.
For every sitting to take evidence	2	0	0

"THE COMPANIES ACT, 1867."

	£	s.	d.
For every sitting before the judge	2	0	0

Registrar's Fees.

	£	s.	d.
For every summons	0	3	0
For every order	0	5	0
For every office copy of order	0	5	0
For every advertisement	1	0	0
For every certificate	0	5	0
For filing every affidavit or statement on affirmation, declaration, or attestation upon honour	0	1	6
For every sitting by the registrar	0	10	0
When the sitting is longer than an hour, then for every additional hour or part thereof	0	7	0

High Bailiff's Fees.

Same fees for service and execution as in equitable matters.

PROCEEDINGS UNDER THE INDUSTRIAL AND PROVIDENT SOCIETIES ACT, 1862.

	£	s.	d.
For every petition presented to a court under sect. 17 of the above Act	1	0	0
For every order for winding up	2	0	0
For every sitting or adjourned sitting of the court in the matter after the order for winding up shall have been made	0	15	0
For the taxation of every bill of costs	0	10	0

(a) See W. N., 1868, pp 63, 64

APPENDIX II.

NOTE.—*For general explanation of these forms, see the Table of Contents*

FORMS RELATING TO THE CONSTITUTION AND INCORPORATION OF COMPANIES.

Common Forms of Application for Shares, &c

No 1.

FORM OF APPLICATION FOR SHARES (a).

THE AUSTRALIAN MALACHITE COMPANY, LIMITED.

To the Directors of "The Australian Malachite Company, Limited."

Gentlemen,—

Having paid to your bankers the sum of being a deposit of per share on shares in the above company, I request that you will allot me that number, and I hereby agree to accept the same, or any less number that you may allot to me, subject to the provisions of the memorandum and articles of association, and to pay the balance in respect of such shares according to the terms of the prospectus, dated 18 .

I am, Gentlemen,

Your obedient servant,

Name in full _____

Occupation _____

Residence or place of business _____

Date _____

Signature _____

(a) Supra, c I, p 39, and following pages

AUSTRALIAN MALACHITE COMPANY, LIMITED.

BANKERS' RECEIPT.

(To be signed by Bankers and returned to applicant.)

RECEIVED the day of 18
from
the sum of being a deposit of
per share on application for shares in the "Australian Malachite Company, Limited."

For

£ Stamp.

No. 2.

LETTER OF ALLOTMENT.

THE AUSTRALIAN MALACHITE COMPANY, LIMITED.

Capital £30,000, *in shares of* £5 *each.*

Members are not liable beyond the amount of their shares.

No. .

shares of £5 each.

Sir,—In compliance with your application, dated the day of , and subject to the conditions therein mentioned or referred to, the directors have allotted to you shares in the above-mentioned undertaking.

No. 3.

CERTIFICATE OF SHARES.

THE AUSTRALIAN MALACHITE COMPANY, LIMITED.

shares of £5 each.

This is to certify that A. B., of is the holder of shares numbered respectively , in

"The Australian Malachite Company, Limited," subject to the provisions of the memorandum and articles of association of the company; and that the deposit of £ per share has been paid in respect of all the above mentioned shares.

Given under the common seal of the company, this day 18 .

FORMS OF MEMORANDA AND ARTICLES OF ASSOCIATION.

No. 4.

Memorandum of Association of "The Australian Malachite Company, Limited."

(1.) The name of the company is "The Australian Malachite Company, Limited."

(2.) The registered office of the company will be situate in England.

(3.) The objects for which the company is established are, the searching for raising and selling malachite and other ores of copper and other minerals that may be found in the district of Queensland or elsewhere, and converting the ores into metal, if it be found expedient so to do; with power for the said company, in furtherance of the above objects, to purchase or otherwise acquire from the Government or any body corporate or individuals, any lease or interest in lands or mines situate in the said district; to accede to any conditions that may be imposed in respect of such lease or interest; to make any payments that may be necessary in order to acquire such lease or interest; and generally to do all such things as are directly or indirectly incidental to any mining undertaking of the company, or to carry into effect any such lease as aforesaid that may be obtained by the company.

(4.) The liability of the members is limited.

(5.) The capital of the company is one hundred and twenty-five thousand pounds, divided into one thousand shares of one hundred and twenty-five pounds each.

We, the several persons whose names and addresses are subscribed, are desirious of being formed into a company, in pursuance of this memorandum of association; and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

Names and Addresses of Subscribers.	Number of Shares taken by each subscriber
1. John Smith, of Crutched Friars, in the City of London	
2. John Jones, of Church Street, in the city of London	
3. Rob. Green, of Brighton, in the county of Sussex	
4. Andrew Brown, of Crutched Friars, in the City of London	
5. Henry Thompson, of Old Windsor, in the County of Berks	
6. John Taylor, jun., of Queen Street, in the City of London	
7. Francis White, of King William Street, in the City of London	
8. Henry Smith, of Moorgate Street, in the City of London	

Dated the day of 18 .

Witness to the above signatures,

Frederick James Rogers, Solicitor,
1, Church Street, London.

No. 5.

Memorandum of Association of "Jones, Green, Brown, and Company, Limited."

(1.) The name of the company is "Jones, Green, Brown, and Company."

(2.) The registered office of the company will be situate in England.

(3.) The objects for which the company is established are the carrying on the grocery business now carried on by the undersigned John Jones, Thomas Green, and Andrew Brown. And doing all such things as may be necessary for extending the said business.

(4.) The liability of the members is limited.

(5.) The capital of the company is nine thousand pounds, divided into three hundred shares of thirty pounds each.

WE, the several persons whose names are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

Names and addresses of subscribers, supra, form No. 4.

No. 6.

Articles of Association of "Jones, Green, Brown, and Company, Limited."

(1.) Article 29 of Table A. shall not apply.

(2.) A general meeting shall be held on the 1st of December, 18 , or at such earlier time as may be appointed by the directors.

(3.) The quorum of members for general meetings shall be thirty, and to this extent article 37 of Table A. shall be modified.

(4.) Articles 52, 53, 58, 59, 63, of Table A. shall not apply.

(5.) The number of directors shall be seven. The subscribers to the memorandum of association shall be the first directors, and shall vacate their office at the first general meeting.

(6.) The directors shall be elected annually by the company in general meeting.

(7.) Article 72 of Table A. shall not apply, and the directors may declare a dividend whenever they think it expedient to do so.

(8.) Articles of Table A., 83 to 94, both inclusive, shall not apply.

(9.) The accounts of the company shall be audited by a committee of five members of the company, called the audit committee.

(10.) The first audit committee shall be nominated by the directors.

(11.) Subsequent audit committees shall be nominated by the members at the ordinary general meeting in each year.

(12.) The audit committee shall be supplied with a copy of the balance sheet, and it shall be their duty to examine the same, with the accounts and vouchers relating thereto.

(13.) The audit committee shall have a list delivered to them of all books kept by the company, and they shall at all reasonable times have access to the books and accounts of the company: they may, at the expense of the company, employ accountants or other persons to assist them in inves-

tigating such accounts, and they may in relation to such accounts examine the directors or any other officers of the company.

(14.) The audit committee shall make a report to the members on the balance-sheet and accounts, and in every such report they shall state whether in their opinion the balance-sheet is a fair and full balance-sheet, containing the particulars required by these regulations of the company, and properly drawn up, so as to exhibit a true and correct view of the state of the company's affairs; and in case they have called for explanation or information from the directors, whether such explanations or information have been given by the directors, and whether they have been satisfactory; and such report shall be read with the report of the directors at the ordinary meeting.

(15.) Table A. shall apply except in so far as its provisions are hereinbefore expressly excluded.

Names and addresses of subscribers

1. John Jones, of
2. John Smith, of
3. Thomas Green, of
4. John Thompson, of
5. Caleb White, of
6. Andrew Brown, of
7. Abel Brown, of

Witness to the above signatures,

A. B., No. 20, Bond Street, Middlesex.

This is a form incorporating Table A with modifications, making annual the election of directors, and substituting an audit committee for the auditors of Table A.

No. 7.

Memorandum of Association of the "United Millers' Company, Limited."

(1.) The name of the company is the "United Millers' Company, Limited."

(2.) The registered office of the company will be situate in England.

(3.) The object for which this company is established are the purchase and sale of flour of all descriptions; also the sale and purchase of grain of all descriptions, the grinding grain, and generally the carrying on the business of millers and the sale of any products of grain in the shape of

flour, bran, or otherwise; with power for the company to purchase or take on lease or otherwise, any land or easements in land, to purchase, erect or take on lease or otherwise any mills plant machinery or other thing that may be necessary or convenient for the business of the company; to purchase the goodwill of any miller's or baker's business, to make advances to any miller or baker with a view to extend the business of the company, to enter into arrangements with any company or person exercising the trade of millers for carrying on business jointly or subject to any special conditions; with power also to purchase the business or co-operation of any other company; and on the occasion of such purchase to enter into any arrangements whereby the shareholders or some of them in such other company may receive, in compensation or part compensation for the sale of their interest paid up or other shares in the purchasing company; or otherwise to amalgamate with any other company; and generally to do all such things as are incidental or conducive to the attainment of the above objects, or any of them, or to carrying into effect the above powers or any of them.

(4.) The liability of the members is limited.

(5.) The capital of the company is 30,000*l.* divided into 6,000 shares of 5*l.* each.

WE, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

Names and addresses of subscribers, supra, form 4.

No. 8.

Articles of Association of the "United Millers' Company, Limited" (*a.*)

Preliminary.

(1.) Table A. annexed to "The Companies Act, 1862," shall not apply.

(2.) In the construction of these Articles, unless there is something inconsistent in the context:—

(*a*) For explanation of this form, see note at end of form.

Words importing the singular number only shall include the plural number; and words importing the plural number only shall include the singular:

Words importing the masculine gender only shall include the feminine gender.

(3.) These Articles are divided into Eight parts, as follows:—

Part I. Preliminary arrangements.

Part II. Distribution of the capital of the company.

Part III. General meetings.

Part IV. Appointment of directors, solicitors, and other officers.

Part V. Management of the business of the company by its officers.

Part VI. Dividends, accounts, and notices.

Part VII. Arbitration.

Part VIII. Dissolution of the company.

PART I.

PRELIMINARY ARRANGEMENTS.

(4.) The directors may, out of any moneys for the time being in their hands, pay all expenses incurred in or about the getting up and establishment of the company, including the expenses of registration (*a*).

(5.) An agreement has been entered into between Robert Bush (hereinafter called "the vendor") of the one part, and the company of the other part, for the purchase by the company of the mill, goodwill, plant, and stock-in-trade of the millers' business, now carried on by the vendor. The purchase-money payable to the vendor under the said agreement is £5,000.

(6.) The vendor will receive payment of one moiety of the purchase-money in cash by the following instalments (namely): the sum of £500 to be paid on the execution of these presents, the sum of £1,000 to be paid within one calendar month from the date of the execution of these presents, and the sum of £1,000 to be paid within three calendar months from the date of the execution of these presents: and the vendor will receive pay-

(*a*) Payment of expenses without taxation held not improper, *Crosley* v *Bank of Wales*, 9 Jur., N.S. 95, 4 Giffard, 314.

ment of the other moiety in 500 fully paid-up shares of the company to be allotted to him by the company on the execution of these presents (*a*).

PART II.

DISTRIBUTION OF THE CAPITAL OF THE COMPANY.

Calls.

(7.) Any shares not allotted, with the exception of the above-mentioned paid-up shares, shall be considered the property of the company, and shall be disposed of in such manner as the directors think best for the interests of the company.

(8.) The directors may from time to time, in their discretion, make calls on all shares, except such shares as are hereby authorised to be issued as paid-up shares.

A call shall be deemed to have been made at the time when the resolution of the directors authorising such call was passed.

Twenty-one days' notice at the least shall be given of each call.

Each member shall be liable to pay the amount of calls made to the persons and at the times and places appointed by the directors.

(9.) If the call payable in respect of any share is not paid before or on the day appointed for payment thereof, any holder for the time being of such share shall be liable to pay interest for the same at the rate of 5 per cent. per annum from the time appointed for payment thereof up to the time of the actual payment.

(10.) The directors may, if they think fit, receive from any of the members willing to advance the same, all or any part of the moneys due on their respective shares beyond the sums actually called for; and on the money so paid in advance, or so much thereof as from time to time exceeds the amount of the calls made on shares in respect of which such advance has

(*a*) See 30 & 31 Vict c 131, s. 25

The agreement should be filed before the issue of the shares.

For a form embodying the agreement in the articles of association, see Articles of the Victoria Hall Company, *infra*

been made, the company may pay interest at such rate as the members paying such moneys in advance and the directors agree upon.

(11.) If several persons are registered as joint holders of any share, any of such persons may give effectual receipts for any dividend payable in respect of such share.

Transfer of Shares.

(12.) A share shall not be transferred, except in accordance with the regulations following; (that is to say)

(*a*) Any holder of a share who proposes to transfer the same, shall serve notice of such proposal on the company.

(*b*) The notice shall be in writing, under the hand of the proposer.

(*c*) The notice shall specify the share or shares to be transferred, and the name or names of the proposed transferee or transferees, and shall be served in manner in which notices are hereinafter directed to be served on the company.

(13.) The directors shall, within ten days from the service of the notice, declare their assent to or dissent from the proposed transfer in writing, addressed to the proposer and sent by post to or left at his registered place of abode. If they do not declare their dissent within such period of ten days, they shall be deemed to have assented to the transfer, and shall cause the same to be registered accordingly. If the directors dissent from the proposed transfer, the proposer may refer the matter to arbitration in manner hereinafter mentioned, unless he is indebted to the company; in which case the decision of the directors shall be final.

(14.) The instrument of transfer of any share in the company shall be executed both by the transferor and transferee, and the transferor shall be deemed to remain a holder of such share until the name of the transferee is entered in the register book in respect thereof.

(15.) Shares in the company shall be transferred in the following form:—

I, *A. B.*, of
in consideration of the sum of pounds paid to me by *C. D.*, of do hereby transfer to the said *C. D.* the share [*or* shares] numbered standing in my name in the books of the company, to hold unto the said *C. D.*, his executors, administrators, and assigns, subject to the several conditions on which I held the same at the

time of the execution hereof; and I the said *C. D.* do hereby agree to take the said share [*or* shares] subject to the same conditions. As witness our hands, the day of

(16.) Every member shall, on payment of such sum not exceeding one shilling as the directors may prescribe, be entitled to a certificate, under the common seal of the company, specifying the share or shares held by him and the amount paid up thereon.

If such certificate is worn out or lost, it may be renewed on payment of such sum not exceeding one shilling as the directors may prescribe.

(17.) The transfer books shall be closed during the fourteen days immediately preceding the ordinary general meetings in each year.

Transmission of Shares.

(18.) The executors or administrators of a deceased member shall be the only persons recognised by the company as having any title to his share.

(19.) Any person becoming entitled to a share transmitted by the death, bankruptcy, or insolvency of any member, or by the marriage of any female member, may, by notice under his hand, served in manner in which notices are hereinafter directed to be served on the company, require the company to do such one of the following things as the directors prefer: that is to say, either to register the person so become entitled or his appointee to be named in the notice, or to purchase the share of the person so become entitled at a price to be agreed upon, or in the event of dispute to be fixed by arbitration.

(20.) The directors shall, within ten days from the service of such notice, declare their election with respect to such transmitted share by writing, addressed to the person so become entitled or left at or sent by post to his registered place of abode; if they do not, they shall be deemed to have elected to register the person so become entitled, or such appointee as aforesaid.

Forfeiture of Shares.

(21.) If any member fails to pay any call due on the appointed day, the directors may, at any time thereafter, during such time as the call remains unpaid, serve a notice on him requiring him to pay such call, together with any interest and expenses that may have accrued by reason of such non-payment.

(22.) The notice shall name a future day on or before which such call, interest, and expenses are to be paid; it shall also name the place where such payment is to be made (the place so named being either the registered office of the company or some other place at which calls of the company are usually made payable). It shall also state that, in the event of non-payment of such call, interest, and expenses at or before the time and at the place appointed, the shares in respect of which such call was made will be liable to be forfeited.

(23.) If the requisitions of any such notice as aforesaid are not complied with, any share in respect of which such notice has been given may at any time thereafter, before payment of all calls, interest, and expenses due in respect of such share has been made, be forfeited by a resolution of the directors to that effect.

(24.) Any share forfeited shall be deemed to be the property of the company, and may be disposed of in such manner as the directors think most beneficial to the company.

(25.) Any member whose share has been forfeited shall, notwithstanding, be liable to pay to the company all calls owing upon such share at the time of the forfeiture.

(26.) If all calls, interest, and expenses due in respect of any forfeited share are paid before it has been disposed of, such share shall revest in the person entitled thereto previously to the forfeiture, and be held by him in the same manner as if the call in respect of which it was forfeited had been duly paid.

Increase of Capital.

(27.) The capital of the company may be increased by the addition of amount not exceeding 30,000*l.*, with the sanction of the company previously given in general meeting, and by the addition of any further amount, with the sanction of a special resolution passed in manner directed by the "Companies Act, 1862."

(28.) Any increase of capital may be raised in shares of such amount as the meeting for sanctioning the increase prescribes, or, if no amount is prescribed, as the directors think expedient.

(29.) Subject, as aforesaid, and to any direction to the contrary that may be given by the meeting that sanctions the increase of capital, any capital

raised by the creation of new shares in pursuance of a resolution of a general meeting shall be considered as part of the original capital, and shall be subject to the same provisions in all respects, whether with reference to the payment of calls, or the forfeiture of shares, or non-payment of calls, or otherwise, as if it had been part of the original capital.

(30.) Subject to any direction to the contrary that may be given by the meeting that sanctions the increase of capital, all new shares shall be offered to the existing members in proportion to the existing shares held by them, and such offer shall be made by notice specifying the number of shares to which the member is entitled, and limiting a time within which the offer, if not accepted, will be deemed to be declined; and after the expiration of such time, or on the receipt of an intimation from the member to whom such notice is given that he declines to accept the shares offered, the directors may dispose of the same in such manner as they think most beneficial to the company.

PART III.

GENERAL MEETINGS.

(31.) The first general meeting shall be held at such time, not being more than six months after the date of the registration of the company, and at such place, as the directors may determine.

(32.) Subsequent general meetings shall be held at such time and place as may be prescribed by the company in general meeting, and if no other time or place is prescribed, general meetings shall be held half-yearly on the first Wednesday in February and the first Wednesday in August in every year, at such hour and place as may be determined by the directors.

(33.) The above-mentioned general meetings shall be called ordinary meetings. All other general meetings shall be called extraordinary.

(34.) The directors may, when they think fit, and they shall on a requisition made in writing by any number of shareholders holding in the aggregate not less than one-fifth part of the amount of the nominal capital for the time being of the company, convene an extraordinary general meeting.

Any requisition so made by the members shall express the object of the meeting proposed to be called, and shall be left at the registered office of the company.

On the receipt of such requisition, the directors shall forthwith proceed to convene an extraordinary general meeting. If they do not proceed to convene the same within twenty-one days from the date of the requisition, the requisitionists or any other members holding the required amount of capital may themselves convene a meeting.

(35.) Seven days' notice at the least, specifying the place, the day, and the hour of meeting, and in case of special business, the general nature of such business, shall be given to the members by notice in manner hereinafter mentioned, or in such other manner as may be prescribed by the company in general meeting; but the non-receipt of such notice by any member shall not invalidate the proceedings of any general meeting.

(36.) All business shall be deemed to be special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting, with the exception of the consideration of the accounts, balance-sheets, and the ordinary report of the directors, and the sanctioning a dividend.

(37.) Any member may, on giving not less than three days' previous notice, submit any resolution to a meeting in respect of a matter not arising out of the business to be conducted at such meeting.

Such notice shall be given by leaving a copy of the resolution at the registered office of the company.

Proceedings at Meetings.

(38.) No business shall be transacted at any general meeting (except at an ordinary meeting, the declaration of a dividend), unless a quorum of shareholders is present at the commencement of such business; and such quorum shall consist of not less that twelve members.

If within one hour from the time appointed for the meeting a quorum of members is not present, the meeting, if convened on the requisition of members, shall be dissolved. In any other case, it shall stand adjourned to the same day on the following week at the same time and place: and if at such adjourned meeting a quorum of members is not present, it shall be adjourned *sine die*.

(39.) The chairman, if any, of the board of directors shall preside as chairman at every meeting of the company.

If there be no such chairman, or if at any meeting he is not present at the time of holding the same, the members present shall choose some one of their number to be chairman of such meeting.

In the case of an equality of votes at any meeting, the chairman, in addition to his original vote, shall have a casting vote.

(40.) The chairman may, with the consent of the meeting, adjourn any meeting from time to time and from place to place; but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which adjournment took place.

(41.) At any general meeting, unless a poll is demanded by at least five members, a declaration by the chairman that a resolution has been carried, and an entry to that effect in the book of proceedings of the company, shall be sufficient evidence of the fact, without proof of the number or proportion of the members who may be in favour of or against such resolution.

(42.) If a poll is demanded in manner aforesaid, the same shall be taken in such manner and at such time as the chairman directs; and the result of such poll shall be deemed to be the resolution of the company in general meeting.

Votes of Members.

(43.) A member shall have one vote for every five shares held by him up to twenty; he shall have one more vote for every additional number of shares, being not less than twenty, of which he may be the holder, but no member shall be entitled to have more than five votes; and no member shall be entitled to a vote in respect of any shares forming an aliquot part of five except a holder of less than five shares, who shall have one vote

(44.) If any member is a lunatic or idiot he may vote by his committee.

(45.) If one or more persons are jointly entitled to a share or shares, the person whose name stands first on the register of members as one of the holders of such share or shares, and no other shall be entitled to vote in respect of the same.

(46.) No member shall be entitled to vote at any meeting unless all calls due from him have been paid, nor at any meeting held after the expiration of three months from the registration of the company, unless he has been possessed of the shares in respect of which he claims to vote for at least three calenda months, unless he is an original allottee of such shares, or has acquired the same by bequest, marriage, or succession to an intestate's estate.

(47.) Votes may be given either personally or by proxy.

(48.) The instrument appointing a proxy shall be in writing under the hand of the appointor, or if such appointor is a corporation under their common seal, and shall be attested by one or more witness or witnesses. No person shall be appointed a proxy who is not a member of the company.

(49.) The instrument appointing a proxy shall be deposited at the registered office of the company not less than seventy-two hours before the time for holding the meeting at which the person named in such instrument proposes to vote; but no instrument appointing a proxy shall be valid after the expiration of twelve months from the date of its execution.

(50.) Any instrument appointing a proxy shall be in the following form:—

"UNITED MILLERS' COMPANY, LIMITED."

I, , of , in the county of , being a member of the "United Millers' Company, Limited," and entitled to vote (*or votes*), hereby appoint , of , as my proxy, to vote for me and on my behalf at the [ordinary *or* extraordinary, *as the case may be*] general meeting, to be held on the day of next, and any adjournment thereof.

As witness my hand this day of 18 .

Signed by the said , in the presence of

PART IV.

APPOINTMENT OF DIRECTORS, SOLICITORS, AND OTHER OFFICERS.

(51.) The directors shall be six in number, of whom one shall be termed managing director, and the others ordinary directors.

(52.) The managing director shall be Edward Smith, of in the county of Middlesex.

(53.) The managing director shall devote his time and abilities to conducting the business of the company and to promoting its interests; and in consideration of his services and of the goodwill and connection which he brings to the company, there shall be paid to him an annual salary of 400*l.*, or such larger salary as may be awarded to him by the company in general meeting; and also, in addition to his salary, a commission of 1*l.* per centum on all sales of flour effected by the company.

(54.) The managing director shall not be removed except by a special resolution of the company, passed in manner directed by the Companies Act, 1862.

(55.) If the managing director dies, resigns, becomes bankrupt or insolvent, or incapable of conducting the business of the company, the ordinary directors shall summon an extraordinary meeting of the company, and it shall rest with such meeting to determine whether the office of managing director is to be abolished or continued, and if continued, by whom and for what remuneration the same is to be filled.

(56.) The first ordinary directors shall be Edward Green, William Jones, William Brown, William White, and John Robinson. They may at any time before the first ordinary meeting of the company add to their number so that the number of ordinary directors does not exceed nine.

(57.) Every ordinary director shall hold not less than twenty shares in the company.

(58.) There shall be paid to each ordinary director for each attendance at meetings of the board a fee of 1*l.*, and such additional remuneration as may be awarded to them by the company in general meeting. The before-mentioned fee of any ordinary director who does not attend shall be forfeited and carried to a fund, and such fund shall at the close of each half year be appropriated in such manner as the ordinary directors may determine.

(59.) An ordinary director shall vacate his office—If he holds any other office or place of profit under the company;

If he becomes bankrupt or insolvent;

If he ceases to hold twenty shares in the company;

If he is concerned in or participates in the profit of any contract with the company in respect of any article in which the company deals.

(60.) The continuing directors may act notwithstanding any vacancy in their body.

Rotation and Proceedings of Directors.

(61.) At the first ordinary meeting, to be held in the year 18 , the whole of the ordinary directors shall retire from office; and at the first ordinary meeting in every subsequent year two of the ordinary directors for the time being shall retire from office.

(62.) The two ordinary directors to retire during the years and shall, unless the ordinary directors agree among themselves, be determined by ballot of the ordinary directors. In every subsequent year, the two directors who have been longest in office shall retire.

(63.) An ordinary director on retiring shall be re-eligible.

(64.) The company, at the general meeting at which any ordinary directors retire, shall fill up the vacated offices by electing a like number of qualified persons.

(65.) If at any meeting at which any election of ordinary directors ought to take place, no such election is made, the meeting shall stand adjourned till the same day in the next week, at the same time and place; and if at such adjourned meeting no election takes place, the former directors shall continue to act until new directors are appointed at the first ordinary meeting of the following year.

(66.) The company may from time to time, in general meeting, increase or reduce the number of ordinary directors, and may also determine in what rotation such increased or reduced number is to go out of office.

(67.) Any casual vacancy occurring in the body of ordinary directors may be filled up by the directors, but any person so chosen shall retain his office so long only as the vacating director would have retained the same if no vacancy had occurred.

(68.) The directors may meet together for the despatch of business, adjourn, and otherwise regulate their meetings as they think fit, so that no meetings in respect of which the ordinary directors are to be paid for their attendance are not held more frequently than four times in a month. They may also determine the quorum necessary for the transaction of business.

(69.) Questions arising at any meeting of directors shall be decided by a

majority of votes. In case of an equality of votes, the chairman, in addition to his original vote, shall have a casting vote. A director may at any time summon a meeting of directors.

(70.) The directors may elect a chairman of their meetings and determine the period for which he is to hold office; but if no such chairman is elected, or if at any meeting the chairman is not present at the time appointed for holding the same, the directors present shall choose some one of their number to be chairman of such meeting.

(71.) The directors may delegate any of their powers to committees consisting of such members of their body as they think fit. Any committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on them by the directors.

(72.) A committee may elect a chairman of their meetings. If no such chairman is elected, or if he is not present at the time appointed for holding the same, the members present shall choose one of their number to be chairman of such meeting.

(73.) A committee may meet and adjourn as they think proper. Questions at any meeting shall be determined by a majority of votes of the members present, and in case of an equal division of votes the chairman, in addition to his original vote, shall have a casting vote.

(74.) All acts done by any meeting of the directors or of a committee of directors, or by any person acting as a director, shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such directors or persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person was duly approved and was qualified to be a director.

(75.) The directors shall cause minutes to be made in books provided for the purpose:—

1. Of all appointments of officers made by the directors;
2. Of the names of the directors present at each meeting of directors and committees of directors;
3. Of all orders made by the directors and committees of directors; and
4. Of all resolutions and proceedings of meetings of the company, and of the directors and committees of directors.

(76.) Any such minute as aforesaid, if signed by any person purporting to be the chairman of any meeting of directors or committee of directors,

or of any meeting of the company, as the case may require, shall be receivable in evidence without any further proof.

(77.) The directors may, in the event of any one of the ordinary directors being guilty of such misconduct as, in the opinion of all the other directors, to render his continuance in office injurious to the company, declare such director to be suspended from office until the question shall be decided by arbitration in manner hereinafter provided.

Other Officers of Company.

(78.) Charles Brown, of , Esq., shall be the solicitor of the company; but he may at any time be removed by a resolution of the company, passed in general meeting.

(79.) The Union Bank of Newcastle shall be the bankers of the company unless and until the company in general meeting otherwise direct.

(80.) The managing director may appoint and remove such other officers and servants as he thinks necessary, but their salaries shall be awarded by the directors.

PART V.

MANAGEMENT OF THE BUSINESS OF THE COMPANY BY ITS OFFICERS.

(81.) The directors may commence and prosecute the objects of the company whenever a sufficient number of shares to render, in their opinion, success probable has been taken up.

(82.) Subject to the restrictions hereinafter mentioned, the directors shall have power to do the following things in the name and on behalf of the company:—

To carry into effect all or any of the objects of the company as expressed in the memorandum of association.

To exercise all or any of the powers given to the company by the memorandum of association.

To bring or defend any action, suit, or prosecution, or other legal proceedings, civil or criminal.

To buy or take on lease any real or personal property that they think

requisite for the purposes of the company, and again to sell the same.

To erect any buildings for the purposes of the company.

To execute all deeds, receipts, and other documents they may think necessary; and for that purpose to use, when necessary, the company's seal.

To refer disputes to arbitration and to compromise any debts or claims to or from the company.

To give time to any debtor for payment of his debt.

To invest any surplus capital of the company in government or real securities, or such other securities as they may, with the sanction of the company in general meeting, select.

To take the interest of any debtor in any mill shop or premises, in satisfaction or part satisfaction of any debt due from him to the company; to employ in carrying on the business of such debtor, such person or persons as they think expedient; to carry on such business so long as they think it advisable, and then to abandon it and dispose of it as they think fit.

To give credit to customers of the company and (when deemed necessary) to require such customers to effect life assurances to an adequate amount, or give other security to the company: with power for the directors, in the event of default being made in payment of the premiums on such assurances, to continue the same out of the funds of the company.

To effect assurances on the lives of debtors to the company and to pay the premiums out of the funds of the company.

To sell assign surrender or discontinue any policies of assurance effected in pursuance of these articles.

To draw accept make and endorse any bill of exchange or promissory note that may be necessary for the purposes of the business of the company.

To take such security from bakers or others for advances made to them as they may think expedient.

To open agencies or branch establishments.

To exercise, in the name and on the behalf of the company, all such

powers of the company as are not hereby required to be exercised by the company in general meeting or given to the managing director alone.

(83.) The directors may, with the consent of a general meeting, borrow and reborrow on behalf of the company, any sums of money, so that the whole amount of moneys due from the company in respect of loans does not at any time exceed £

(84.) The directors may give as security for any loans made in pursuance of these articles, or for any part thereof, mortgages on the whole, or any part of the real or personal property of the company, bonds bills of exchange promissory notes or such other securities as they think fit.

(85.) Mortgages made by the directors as securities for any loans may be in such forms and contain such powers of sale, and other powers and provisions as the directors think expedient.

(86.) The directors, in the exercise of their powers, shall be subject to the following restrictions :—

The seal of the company shall not be affixed to any instrument except in the presence of three or more directors, one of whom shall be the managing director, who shall attest the sealing thereof.

All moneys, except the sums required for current expenses, and all bills and notes belonging to the company, shall from time to time be paid to or deposited by the directors with the bankers of the company to the account of the "United Millers' Company, Limited."

No moneys or notes so deposited shall be delivered or paid out of such bank except on the order of not fewer than three of the directors, one of whom shall be the managing director. No agency or branch establishment shall be opened except with the unanimous assent of such directors as may be present at three successive meetings of directors.

No business except that of purchasing and selling flour or grain, or other the ordinary business of the company, shall be undertaken except with the unanimous consent of such directors as may be present at three successive meetings of directors.

No advance shall be made to any director or other officer of the company.

The directors shall, in the exercise of their powers, conform to any regulations that may be imposed by the company in general meeting, but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if no such regulations had been made.

(87.) The managing director shall have power to exercise a veto upon any proposed operation or proceeding of the directors which, upon due consideration, he may deem grossly wrong or unwarrantable, contrary to the articles of association, or extremely injurious to or subversive of the interests of the company.

Any veto given by the managing director shall be subject to the confirmation or disallowance of the next succeeding ordinary meeting of the company, or of an extraordinary meeting convened for the purpose of taking the same into consideration, unless the matters in respect of which the veto has been given are arranged in a manner satisfactory both to the managing director and to the other directors.

(88.) The directors may delegate any of their powers to the managing director, subject to the provisions of these articles.

PART VI.

Dividends Accounts and Notices.

Dividends.

(89.) The directors may, with the sanction of the company in general meeting, declare a dividend to be paid to the shareholders in proportion to their shares.

No dividend shall be payable except out of the profits arising from the business of the company.

(90.) The directors may, before recommending any dividend, set aside out of the profits of the company such sum as they think proper as a reserved fund to meet contingencies, or for equalising dividends, or for repairing or maintaining the works connected with the business of the company, or any part thereof; and the directors may invest the sum so

set apart as a reserved fund upon government or real securities, or such other securities as they, with the sanction of the company, may select.

(91.) The directors may deduct from the dividends payable to any member all such sums of money as may be due from him to the company on account of calls or otherwise.

(92.) Notice of any dividend that may have been declared shall be given to each member in manner hereinafter mentioned.

(93.) No dividend shall bear interest as against the company.

Accounts.

(94.) The directors shall cause true accounts to be kept :—

Of the stock in trade of the company :

Of the sums of money received and expended by the company, and the matters in respect of which such receipt and expenditure takes place ; and

Of the credits and liabilities of the company.

(95.) Such accounts shall be kept upon the principle of double-entry in a cash-book, journal, and ledger. The books of accounts shall be kept at the registered office of the company, and any committee of six members appointed by the company in general meeting, shall have power, subject to any reasonable restrictions as to the time and manner of inspecting the same that may be imposed by the directors, to inspect such accounts during the hours of business.

(96.) Once, at the least in every half-year the directors shall lay before the company in general meeting a statement of the income and expenditure for the past half-year, made up to a date not more than two months before such meeting.

(97.) The statement so made shall show, arranged under the most convenient heads, the amount of gross income, distinguishing the several sources from which it has been derived, and the amount of gross expenditure, distinguishing the expense of the establishment, salaries, and other like matters. Every item of expenditure fairly chargeable against the half-year's income shall be brought into account, so that a just balance-sheet of profit and loss may be laid before the meeting ; and in cases where any item of expenditure which may in fairness be distributed over several years has been incurred in one half year, the whole amount of such item shall be

stated, with the addition of the reasons why only a portion of such expenditure is charged against the income of the half-year.

(98.) A balance-sheet shall be made out in every half-year and laid before the general meeting of the company, and such balance-sheet shall contain a summary of the property and liabilities of the company arranged under the heads appearing in the form annexed to Table A. of the Companies Act, 1862.

(99.) A printed copy of such balance-sheet shall, seven days previously to such meeting, be delivered at or sent by post to the registered address of every member.

Audit.

(100.) Once, at the least, in every half-year the accounts of the company shall be examined, and the correctness of the balance-sheet ascertained by one or more auditor or auditors.

(101.) The first auditor shall be of Esq., who shall hold his office until the first ordinary general meeting of the company. All subsequent auditors shall be elected annually by the company at the first ordinary general meeting held in each year.

(102.) If any casual vacancy occurs in the office of auditor, the directors shall appoint an auditor to fill such vacancy.

For remaining provisions as to Audit, see Table A., arts. 85-94, omitting arts. 87 and 90.

Notices.

(103.) Notices may be served on the company by leaving the same at or sending the same by post to the registered office of the company. Notices required to be given by the company to the members may be served either personally, or in the case of members whose registered place of abode is situate in any part of the United Kingdom, by leaving the same, or sending them through the post, in a letter addressed to the members at their registered places of abode.

(104.) Where the registered place of abode of any member is not situate in the United Kingdom, he shall appoint some place situate in the United Kingdom to which notices addressed to him may be sent, and any place so

appointed shall for the purposes of these articles be deemed to be the registered place of abode of the appointor.

(105.) If any such member as last aforesaid neglect to give such address as is hereinbefore required, notices for him shall be posted in a conspicuous place in the registered office of the company; and for all the purposes of these articles, the registered office of the company shall be deemed to be the registered place of abode of such member.

(106.) Any notice requiring authentication by the company may be signed by any director, secretary, or other authorised officer of the company, and need not be under the common seal of the company, and the same may be in writing or in print, or partly in writing and partly in print.

(107.) Notices by letter shall be posted in such time as to admit of the letter being delivered in the due course of delivery within the period (if any) prescribed for the giving of such notice: and in proving such service it shall be sufficient to prove that such notice was properly directed, and that it was put into the post-office at such time as aforesaid.

(108.) A notice shall be deemed to have been served (in the case of service by post) at the time when the letter containing such notice would be delivered in the due course of the post, in other cases to have been served at the time at which such service actually takes place.

(109.) All notices directed to be given to the members shall, with respect to any share to which persons are jointly entitled, be given to whichever of the said persons is named first on the register of members; and notice so given shall be sufficient notice to all the proprietors of such share.

PART VII.

ARBITRATION.

(110.) If any difference the manner of deciding which is not hereinbefore described, or which is directed to be settled by arbitration without further directions, arises between any person or bodies of persons to whom the regulations of these articles apply, such difference shall, unless the parties agree to refer the same to a single arbitrator, be settled by three arbitrators, of whom one shall be chosen by each of the parties to the difference, and the third by the two arbitrators first chosen.

(111.) The decision of any two arbitrators shall be conclusive.

(112.) If either party to the difference makes default in appointing an arbitrator for ten days after the other party has given him notice to appoint the same such other party may appoint an arbitrator to act in the place of the arbitrator of the defaulting party.

(113.) If from any cause whatever a third arbitrator is not appointed, when required, an appointment shall be made in manner directed by the "Common Law Procedure Act, 1854."

PART VIII.

DISSOLUTION.

(114.) If it be proved to the satisfaction of any meeting that the company is unable to pay its debts, such meeting may thereupon declare the company to be dissolved and require the same to be wound up by the court, or subject to the supervision of the court, or altogether voluntarily.

[Names and addresses of subscribers.]

This form is special in many of its provisions, and entirely excludes Table A. Amongst other things, it places restrictions on the transfer of shares, appoints a managing director, gives unusually large powers to the directors, and provides against the difficulty of serving notices on shareholders resident abroad.

No. 9.

Memorandum of Association of the Central Telegraph Company (Limited).

Memorandum of Association.

(1.) The name of the company is "The Central Telegraph Company (Limited)."

(2.) The registered office of the company will be situate in Scotland.

(3.) The object of the company is to provide telegraphic communication between different places, whether situate in the United Kingdom or elsewhere, and for the purposes aforesaid to purchase or otherwise acquire the property or rights of, or to make arrangements with, any existing or future telegraph company; to acquire any patents; to apply for any Act of Par-

liament; to acquire land, and to do all other things that may conduce to carrying into effect the objects of the company, or to be incidental thereto.

(4.) The liability of the members is limited.

(5.) The nominal capital of the company is 60,000*l.*, divided into 600 shares of 50*l.* each, and 1,500 shares of 20*l.* each.

WE, the several persons whose names and addresses are subscribed hereto, are desirous of being formed into a company, in pursuance of this memorandum of association; and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

[Names and addresses of subscribers.]

No. 10.

Articles of Association of the Central Telegraph Company (Limited). (a)

Purpose of Company.

(1.) The Central Telegraph Company (Limited), hereinafter called "the company," is formed for the purpose of acquiring the property and privileges of the North Scottish Telegraph Company, and the South Scottish Telegraph Company, hereinafter called "the single companies," and of any companies connected with them, and of working their separate undertakings as one concern, and for the further purposes mentioned in the memorandum of association.

(2.) If the company does not acquire the property or the right to carry on the business of the single companies or one of them before the expiration of twelve calendar months from the date of its incorporation, the company shall be dissolved forthwith.

Division of Share Capital.

(3.) The shares of the company shall be divided into three classes, distinguished by the letters A, B, C.

(a) For explanation of this form, see note at end of form.

(4.) Class A shall consist of 600 shares of 50*l.* each, class B of 800 shares of 50*l.* each, and class C of 700 shares of 20*l.* each.

(5.) The holders of A shares shall, until the day of 18 , inclusive, be entitled to receive out of the net profits of the company, as a first charge, a dividend of 6*l.* per cent. per annum.

(6.) The holders of B shares shall, during the same period, be entitled to receive out of the net profits of the company, as a second charge, a dividend of 8*l.* per cent. per annum.

(7.) The holders of C shares shall, during the same period, be entitled to receive out of the net profits of the company, as a third charge, the dividends following: that is to say, until the day of , 18 , inclusive, a dividend of 4*l.* per cent. per annum; until the day of , 18 , inclusive, a dividend of 4*l.* 10*s.* per cent. per annum; and until the day of , 18 , inclusive, a dividend of 5*l.* per cent. per annum.

(8.) If any surplus net profits remain after payment of such dividends as aforesaid, such surplus shall be payable exclusively to the holders of the shares A & C in equal and rateable proportions.

(9.) In calculating net profits for the purpose of ascertaining the dividends payable during the aforesaid period on A & B shares, not more than 6,000*l.* a year shall be allowed for the maintenance of the lines, and any excess above that amount shall be payable equally out of the amount appropriated as dividends on A & C shares.

(10.) If during the aforesaid period any dividends on B shares are in arrear by reason of the net profits of the company being insufficient to meet the same, such arrears shall be a debt due from the company, payable out of the future profits of the company, and shall bear interest at the rate of 5*l.* per cent. per annum.

(11.) After the said day of , 18 , B shares shall be termed "preferential shares," and the holder of any such shares shall, subject to such right of redemption as is hereinafter mentioned, be entitled to receive out of the net profits of the company, as a first charge thereon, a dividend of 7*l.* per cent. per annum.

(12.) After the said day of , 18 , A & C shares shall be termed "ordinary shares," and the holders of such shares shall be entitled to rateable dividends out of the net profits of the company remaining

ing after payment of the dividends hereinbefore mentioned on the preferential shares.

(13.) The company may, at any time after the day of 18 , and before the day of , 18 , but not afterwards, redeem any preferential share on giving the holder thereof one calendar month's notice, by writing, delivered at or sent by post to his registered place of abode, and on payment of 20*l.* in respect of each share redeemed, together with all dividends (and interest if any) due thereon, or if such redemption takes place between the days appointed for payment of dividends, together with such proportionate part of the dividends as may then have accrued due.

(14.) Any share redeemed in manner aforesaid shall thereafter cease to have any preference in the payment of dividends over any other share in the company, and may be disposed of by the company in such manner as it thinks best.

(15.) No alteration shall be made by special resolution or otherwise, so as to affect the priority or preference hereinbefore awarded to the holders of any particular shares.

Substitution of Shares in the Company for Shares in the single Companies.

(16.) Shares in the company shall be deemed to be of the following values relatively to shares in the single companies; that is to say, every A share shall be deemed to be equal in value to a share of 50*l.* in the share capital of the North Scottish Telegraph Company, or to any moneys that may, in the event of such company being dissolved, be payable in respect of such share; every B share shall be deemed to be equal in value to a share of 20*l.* in the preferential redeemable share capital of the South Scottish Telegraph Company, or to any moneys that may, in the event of such company being dissolved, be payable in respect of such 20*l.* redeemable share capital; and every C share shall be deemed to be equal in value to a share of 20*l.* in the ordinary share capital of the South Scottish Telegraph Company, or to any moneys that may, in the event of such company being dissolved, be payable in respect of such amount of share capital.

(17.) A holder of a share in either of the single companies, upon accepting a share of a corresponding class in the company, shall be deemed to

hold his share in the single company, and also any moneys that may be payable in respect of such share, in the event of such single company being dissolved, upon trust for the company, and to be disposed of as the company may think fit, subject to to the proviso that such holder shall be entitled to all dividends that may be declared by the directors of the single company to be payable in respect of such share during such time as such single company continues to carry on its business.

(18.) Shares in the company shall be offered to the holders of corresponding shares in the single companies, and if not accepted by them shall be disposed of in such manner as the company thinks best.

Acquisition by "the Company" of property of the Single Companies.

(19.) The directors of the company may make such arrangements as they think best with respect to the acquisition of any property or privileges belonging to the single companies. They may purchase such property subject to any liabilities; they may compromise any claim; they may give, by way of consideration, any shares paid up or otherwise; and generally they may act in the premises as if they were purchasing such property or privileges on behalf of themselves instead of the company.

(20.) The directors of the company may enter into any arrangements they may think advisable with both or one of the single companies for carrying on the business of such companies, or one of them, either wholly or partially, notwithstanding that no transfer of the property of the single companies or company has been made to the company

(21.) The directors of the company if authorised so to do by special resolution, may acquire the property of any telegraphic company other than the single companies hereinbefore mentioned, or enter into arrangements with such other company for carrying on their business, or for amalgamating the undertaking of the company with any such other telegraphic company.

(22.) The directors of the company may, by borrowing or by disposing of such shares in the company as may not have been disposed of in pursuance of the provisions hereinbefore contained, raise any sum they may think necessary for the purpose of purchasing the property of the single companies, or either of them, or the interest of any member of either of the single companies, or for the purpose of carrying into effect any such

arrangements as are hereinbefore mentioned, with respect to the business of the single companies, or one of them, or any other telegraph company, and may apply the sum so raised, or any portion thereof accordingly.

In this form the North Scottish and South Scottish Telegraph Companies are supposed to be desirous of amalgamating, but not to have any power of doing so.

Accordingly a third company, "The Central Telegraph Company," is formed, with power to exchange its shares for shares in the old companies on certain terms specified in its articles of association.

As soon as this new company is formed the old companies dissolve themselves by special resolution, on condition of their members becoming members of the new company.

The above form only contains such provisions as are necessary for effecting the amalgamation, as the regulations for the government of the new company may readily be collected from the preceding forms.

No. 11.

Memorandum of Association of the Lodging House and Cottage Improvement Association, Limited.

(1.) The name of the company is "The Lodging House and Cottage Improvement Association, Limited."

(2.) The registered office of the association will be situate in England.

(3.) The objects for which the association is established are the following, that is to say—the construction or adaptation of dwelling-houses and lodgings, furnished or unfurnished, for the use of the middle and working classes, of an improved description; and lighted warmed and ventilated on scientific principles. Also the construction or adaptation of rooms or other large buildings, lighted warmed and ventilated in manner aforesaid, for the use of public assemblies public offices warehouses clubs or other commercial or social purposes; and the selling or leasing, at a profit, any dwelling houses or lodgings rooms or other buildings so constructed, with power to purchase or take on lease any land machinery houses or buildings of any description; and to do any other thing necessary for carrying into effect the objects of the company.

(4.) The liability of the members is limited.

(5.) The capital of the company is one hundred thousand pounds, divided into fifty thousand shares of two pounds each.

WE, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

[Names and addresses of subscribers]

Table A. will suit an association of this description

No. 12.

Memorandum of Association of the Panama Railway Company, Limited.

Memorandum of Association.

(1.) The name of the company is "The Panama Railway Company, Limited."

(2.) The registered office of the company will be situate in England.

(3.) The objects for which the company is established are, the making and maintaining a railway, with all convenient branches across the Isthmus of Panama; the making of machinery, the carriage of passengers animals and goods, the erecting warehouses offices and buildings, and the doing all such things as are conducive to the carrying on of the business of a railway company; with power for the company, in connection with, or as conducive to the profitable use of the said railway, to do any of the following things, that is to say,—to make and maintain hotels, to make and maintain any docks piers or wharves, to improve any ports or harbours, to maintain in any ports or harbours steam-tugs boats lighters or vessels, for the use of ships frequenting such ports or harbours, to construct any lighthouse in or near any ports or harbours, to lay down any buoys or beacons in or near any ports or harbours, and generally to construct any work or thing in or near any ports or harbours conducive to the safety or convenience of shipping, or of persons carried in ships, or facilitating the shipping or unshipping or the storing of goods. Also the making along the line of, or in connection with the said railway, magnetic and other telegraphs, and the doing all such things as are conducive to the carrying on the business of a telegraph company, with power for the said company to sell or lease to any other company or person any telegraph so made, or to confer on any company

or person the right to make any telegraph which the company would be hereby authorised to make. Also the management of any land granted or to be granted by the State, with power to found on such land, towns or villages, with all necessary accessories, and to sell lease mortgage, or otherwise deal with the same. Also the acquisition by purchase or otherwise of any other land in or near the Isthmus, with a like power of founding towns and villages, selling leasing mortgaging, or otherwise dealing with the same; also the purchase of a certain charter facilitating the carrying into effect the above objects, or some of them, granted by the State on the 1st of November, 18 , to be held and observed as a law of that State; and of all other instruments supplementary thereto, or in amendment confirmation or extension thereof; and of all lands rights and privileges conferred thereby; and generally to do all things whatsoever, directly or indirectly incident to the above-mentioned undertakings, or to carrying into effect the purposes of the said charter and other instruments.

(4.) The liability of the members is limited.

(5.) The capital of the company is two millions and fifty thousand pounds, divided into 100,000 shares of 20*l.* 10*s.* each.

WE, the several persons whose names and addresses are subscribed are desirous of being formed into a company, in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

[Names and addresses of subscribers.]

No. 13.

Memorandum of Association of the Glastonbury Canal Steam Tug Company, Limited.

(1.) The name of the company is "The Glastonbury Canal Steam Tug Company, Limited.

(2.) The registered office of the company will be situate in England.

(3.) The objects for which the company is established are, the application of steam power by means of a screw or otherwise, and either alone or as auxiliary to horse power, to propelling or towing flats boats or other vessels on the Glastonbury Canal, and any branches of the said canal being the

property of the Glastonbury Canal Company, with power of the company to conduct, on behalf of themselves, or as agents for others, the business of carrying goods passengers and traffic of every description, along such canal and branches as aforesaid, or to supply steam power to other carriers on such canal and branches; also the purchase of any patent screw or other invention that may be useful or convenient for propelling or towing flats boats or other vessels, along canals, or the purchase of any license for any such invention, with power for the company to grant licenses for the use of, or otherwise to derive a profit from, any patent invention of which they may be possessed; also the purchase of any land machinery or vessels, or the construction of any machinery or vessels that may be useful or convenient for the above objects; also the doing all things whatsoever directly, or indirectly incident to the above objects, or any of them, or conducive to carrying the same into effect.

(4.) The liability of the members is limited.

(5.) The capital of the company is 5,000*l.*, divided into 500 shares of 10*l.* each.

WE, the several persons whose names and addresses are subscribed, are desirous of being formed into a company in pursuance of this memorandum of association; and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

[Names and addresses of subscribers]

No. 14.

Memorandum of Association of the Victoria Hall Company, Limited.

(1.) The name of the company is "The Victoria Hall Company, Limited."

(2.) The registered office of the company will be situate in England.

(3.) The objects for which the company is established are to incorporate as a limited company the members of the existing Victoria Hall Company, to acquire the Victoria Hall and other property of such company, and to appropriate and fit up the Victoria Hall, situate at Charlton, in the county of Northampton, to and for such purposes and with such musical instruments and other furniture as the company may think expedient.

(4.) The liability of the members is limited.

(5.) The capital of the company is 36,000*l.*, divided into 1,600 shares of 10*l.* each to be called original shares, and to be considered as fully paid up, and 2000 shares of 10*l.* each to be called preference shares.

WE, the several persons whose names and addresses are subscribed (*a*), are desirous of being formed into a company in pursuance of this memorandum of association, and we respectively agree to take the number of original shares in the capital of the company set opposite our respective names.

[Names and addresses of subscribers.]

No. 15.

Articles of Association of the Victoria Hall Company, Limited.

SHARES.

(1.) The shares called in the memorandum of association original shares represent the shares in the existing Victoria Hall Company (hereinafter called the old company), and in pursuance of the agreement contained in the schedule to these articles are issued to the subscribers of the memorandum of association, in proportion to and in consideration of their respective interests in the old company (*b*).

(2.) The shares called in the memorandum of association preference shares are new shares, and are intended to have such priority as is hereinafter mentioned.

(3.) The holder of a preference share shall be entitled to receive out of the profits of the company as a first charge a dividend at the rate of 5 per cent.

(4.) The holder of an original share shall be entitled to receive out of the profits of the company as a second charge a dividend at the rate of 5 per cent.

(5.) The residue, if any, of profits shall be divided rateably between the holders of the original and preference shares.

(6.) If the profits of the company made in any one year are insufficient to pay the amount of dividend hereinbefore assigned to preference or origi-

(*a*) *i.e.* all the members of the old company.

(*b*) It would seem, as the decisions stand at present, desirable if not necessary to file the agreement separately from the articles of association. See note to s. 25 of the Act of 1867, *supra*.

nal shares, the deficiency in such year shall be deemed to be extinguished, and shall not be claimed as a debt against the company.

(7.) The directors of the company shall be nine in number.

(8.) The persons hereinafter named shall be the first directors of the company, that is to say,

(9.) William Smith and George Jones shall be the first auditors of the company.

(10.) No member shall be entitled to vote at any meeting unless all calls due from him have been paid.

(11.) Subject as aforesaid the company shall be governed by the provisions of Table A. annexed to the Companies Act 1862.

[Names and addresses of subscribers.]

SCHEDULE TO THE FOREGOING ARTICLES OF ASSOCIATION.

AN AGREEMENT made the day of 18 , between A. B., C. D., E. F., &c. (*all the members of the original Victoria Hall Company*), hereinafter called "the old company," of the first part, L. M., and N. O. (*trustees in whom the Hall and other property of the old company is vested*), of the second part, and the Victoria Hall Company, Limited (hereinafter called "the new company"), of the third part. Whereas [*Recite—Formation of old company—Resolution to form the new company as a company limited by shares, and to transfer property, &c., of old company to new company—Formation and incorporation of new company, under the Acts of* 1862 *and* 1867.]

It is agreed as follows :

(1.) Each member of the old company accepts the number of fully paid-up shares set opposite to his name in the memorandum of association of the new company in consideration of the transfer by him of all his interest in the Victoria Hall, the fittings and furniture thereof, and all other the property of every description of the old company to the new company ; and such interest is accordingly transferred to and vested in the new company.

(2.) On the execution of these presents the said L. M. and N. O. will execute a proper conveyance and assignment to the new company of the Victoria Hall, and all other the property of every description vested in or belonging to them as trustees for the old company.

(3.) From and after the execution of these presents, the old company shall be dissolved.

(3.) The new company will at all times keep indemnified the members of the old company, their heirs executors and administrators, and the said L. M. and N. O. their heirs executors and administrators, from all actions suits claims proceedings and liabilities (whether commenced or arising before or after the execution of these presents), in respect of the Victoria Hall, and all other the property and obligations of the old company.

In Witness, &c.

NOTE.—In this form a company, regulated by the common law, is supposed to have built the Victoria Hall, but to have failed in providing sufficient funds to maintain it. The original company forms itself into a limited company, and issues preference shares.

No. 16.

Memorandum of Association of the Charlton Dock Company, Limited (*a*).

(1.) The name of the company is "The Charlton Dock Company, Limited."

(2.) The registered office of the company will be situate in England.

(3.) The objects for which the company is established are the building and repairing of ships boats and vessels of every description for ocean or inland navigation, to be propelled by steam sails or otherwise, and the fitting such ships boats or vessels with all requisite machinery and fittings; also the maintenance for the use of the company, or for letting out on hire of graving docks or other conveniences for building or repairing ships boats or vessels; also the purchase of ships boats and vessels of every description complete or not complete sound or out of repair, with a view to make a profit of the vessels so purchased, after completing or repairing such of them as may be imperfect, by a resale, or by letting out the same for hire or by trading therewith on behalf of the company; with power for the company to purchase any graving docks or any land adapted for graving docks or for yards blocks slips or ways for building or repairing ships, to make and maintain any graving dock yards blocks slips or ways, as aforesaid, to purchase any manufactories machinery or fixtures, for the purpose of building or repairing ships, to purchase the offices business and goodwill of any ship builders, or ship repairers, and generally to do all things whatsoever, directly or indirectly incident to the above objects, or conducive to carrying the same into effect.

(*a*) See note at end of form.

(4.) The liability of the members is limited.

(5.) The nominal capital of the company is 80,000*l.*, divided into 1,600 shares of 50*l.* each.

WE, the several persons whose names and addresses are subscribed, are desirous of being formed into a company in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

[Names and addresses of subscribers.]

No. 17.

Articles of Association of the Charlton Dock Company, Limited.

Preliminary.

1. Table A. annexed to the Companies Act, 1862, shall not apply.

2. In the construction of these Articles, unless there is something inconsistent in the context,

Words importing the singular number only shall include the plural number, and words importing the plural number only shall include the singular number.

Words importing the masculine gender only, shall include the feminine gender.

The term "ship" shall include barges boats and every description of vessel used for ocean or inland navigation.

Where, by these articles, any meeting is directed to be held, or any act to be done on any appointed day, and such appointed day happens to be a Sunday, Christmas-Day, Good Friday, Bank holiday, or day set apart for any public fast or public thanksgiving, such meeting shall be held on the day next succeeding the appointed day, that is not one of the days hereinbefore particularly mentioned.

3. These Articles shall be divided into Eight parts, relating to the following matters, that is to say :—

Part I.—Relating to the objects of the company and preliminary arrangements.

Part II.—Relating to the distribution of the capital of the company.

Part III.—Relating to general meetings.

Part IV.—Relating to the appointment of directors, managers, secretary, and other officers.

Part V.—Relating to the management of the business of the company by its officers.

Part VI.—Relating to dividends, accounts, and notices.

Part VII.—Relating to arbitration.

Part VIII.—Relating to the dissolution of the company.

PART I.

OBJECTS OF COMPANY AND PRELIMINARY ARRANGEMENTS.

4. The company is formed for the objects mentioned in the memorandum of association, but the immediate object of the company is to carry on the business of building and repairing ships at the yards hereinafter mentioned on account of the company, or as employees of other persons, subject to this restriction, that no ship exceeding twenty tons burthen shall be built or be purchased for repair, by, or on account of the company, without the sanction of a resolution of the directors, to be passed at a meeting specially convened for the purpose, and attended by not less than five directors.

5. The business of the company shall be carried on at the docks and yards at Charlton, belonging to Messrs. , and at such other place or places, on or near to the River Mersey, as the company in general meeting shall from time to time appoint.

6. The directors shall have power forthwith to purchase on behalf of the company, the following properties, that is to say,—

(1.) All the estate and interest of the said Messrs. in the docks and yards in Ship Street.

(2.) All plant, machinery, fixtures, interests, appurtenances, stock-in-trade, fixed or removable chattels of the said Messrs. in, upon, or belonging to the docks and yards aforesaid.

(3.) Also the goodwill of the said Messrs. of and in the business of shipwrights, carried on by them.

7. There may be paid to the said Messrs. in respect of any purchases hereby authorised to be made of them any sum of money

not exceeding 22,000*l.*, and paid-up shares to an amount not exceeding 10,000*l.* (*a*)

8. Subject to the above conditions as to price, the directors may make the purchases hereby authorised to be made by them upon such terms, and subject to such stipulations as to title or otherwise as they may think best, with power to allow any portion of the purchase-money of the property purchased to remain on mortgage of the property of the company, or of any part thereof.

9. The directors may issue as paid-up a sufficient number of shares to carry into effect the said purchases, and the holder of any such shares shall be credited in the books of the company with the full amount of all calls due on such shares.

10. The directors may out of any moneys for the time being in their hands, pay all expenses incurred in the formation of the company, including the expenses of registration.

Part II.

Distribution of Capital of the Company.

Calls.

11. A deposit or call of 10*l.* in respect of each share shall be paid on allotment, except as to shares herein authorised to be issued a paid-up shares. And the directors may from time to time in their discretion make further calls not exceeding 10*l.* per share, at intervals of not less than three months on all shares, except the said shares authorised to be issued as paid-up shares.

(See Table A., for remaining provisions as to calls.)

Transfer of Shares.

(See Table A.)

Transmission of Shares.

(See Table A.)

(*a*) If paid-up shares form any part of the consideration, the contract must be filed in conformity with 30 & 31 Vict. c. 131, s. 25.

Forfeiture of Shares.

(See Table A.)

Increase of Capital.

(See Table A.)

PART III.

GENERAL MEETINGS.

(See Table A.)

Proceedings at Meetings.

No business shall be transacted at any general meeting unless a quorum of shareholders is present at the commencement of such business, and such quorum shall consist of not less than five shareholders.

If within one hour from the time appointed for the meeting, a quorum of shareholders is not present, the meeting, if convened upon the requisition of the shareholders, shall be dissolved. In any other case it shall stand adjourned to the same day in the following week, at the same time and place; and if at such adjourned meeting a quorum of shareholders is not not present, it shall be adjourned *sine die.*

(See Table A. for remaining provisions under this head.)

Votes of Members.

(See Table A.)

PART IV.

APPOINTMENT OF DIRECTORS, MANAGERS, SECRETARY, AND OTHER OFFICERS.

There shall be appointed as officers of the company—

1. Directors.
2. Managers.
3. Secretary.
4. Solicitors.
5. Bankers.

Directors.

The directors shall be six in number.

The first directors shall be

Every director shall hold ten shares at the least in the company.

The office of director shall be vacated :—

If he ceases to hold ten shares in the company ;

If he holds any other office or place of profit under the company ;

If he becomes bankrupt or insolvent ;

If he is concerned in or participates in the profits of any contract for the sale of any article to the company.

If he participates in the profits of any work done for the company.

But the above rules shall be subject to the following exceptions—That no director shall vacate his office by reason of his being a shareholder in any incorporated company which has entered into contracts with, or done any work for the company of which he is director : nevertheless he shall not vote in respect of such contract or work, and if he does so vote, his vote shall not be counted.

The future remuneration of the directors, and the remuneration to be paid to them for services performed previously to the holding of the first ordinary general meeting of the company, shall be fixed by the first ordinary general meeting ; but it may be varied at any time by any ordinary or extraordinary meeting.

The remuneration to be paid to the directors in any one year shall not exceed 300*l.*

The continuing directors may act notwithstanding any vacancy in their body.

Rotation of Directors.

(See Table A.)

Proceedings of Directors.

(See Table A.)

Managers.

The said Messrs. shall be the first managers of the company.

There shall be paid to each of them, by way of remuneration for their services, the sum of 500*l.* a-year, with the addition of the payment to each

of them of a percentage of 5*l.* per cent. per annum on the net profits of the company, after deducting the amount in each year to be carried to the sinking fund as hereinafter mentioned.

The directors may increase the number of managers, and may give to any additional managers such salary as they think fit.

Any vacancy occurring in the office of any manager may be filled up by the directors, who may give to the person filling such vacancy such salary as they think fit.

Any manager may be removed by the directors.

Other Officers.

The secretary shall be appointed by the directors, and they may award to him such remuneration (not exceeding 800*l.* per annum) as they think just.

Messrs. Smith and Brown, of Fenwick Street, London, shall be the solicitors of the company.

The West County Commercial Bank shall be the bankers of the company.

The secretary solicitors and bankers may at any time be removed, and others appointed in their room by the directors.

The directors may also appoint such officers or servants as they may require, remove them when they think fit, and award their salaries.

PART V.

MANAGEMENT OF THE BUSINESS OF THE COMPANY BY ITS OFFICERS.

Duties of Directors.

The superintendance of the business of the company shall be vested in the directors, subject to the control of the company in general meeting; but no regulation made by the company in general meeting shall invalidate any prior act of the directors, which would have been valid if such regulation had not been made.

The directors may commence and prosecute the objects of the company, notwithstanding the whole of the shares have not been issued or taken up.

Subject to any restrictions that may be imposed by the company in general meeting, the directors shall have power to do the following things:

To bring or defend any action suit or prosecution, or other legal proceeding, civil or criminal, in the name and on behalf of the company.

To execute in the name and on behalf of the company all deeds receipts, and other documents they may think necessary, and for that purpose to use when necessary the company's seal.

To refer disputes to arbitration, and compromise any debt or claim.

To give time to any debtor for payment of his debt.

To draw accept make and endorse any bill of exchange or promissory note that may be necessary for the purposes of the business of the company.

To exercise in the name, and on behalf of the company all such powers of the company as are not hereby required to be exercised by the company in general meeting.

The directors in the exercise of their powers shall be subject to the following restrictions—

All moneys except the sums required for current expenses and all bills and notes belonging to the company shall from time to time be paid to, and deposited by the directors with the bankers of the company, to the account of "The Charlton Dock Company, Limited."

No moneys bills or notes so deposited shall be delivered or paid out of such bank, except on the order of not fewer than two of the directors, countersigned by the secretary of the company.

The directors may from time to time, with the consent of a general meeting, borrow and reborrow on behalf of the company, any sums of money, so that the whole amount of moneys due from the company, in respect of loans, does not at any one time exceed 25,000*l.*

The directors may, as security for any sums borrowed, mortgage any of the property of the company, or execute any bonds debentures promissory notes, or other securities on behalf of the company.

The receipt of the directors, or any two of them, shall, as between the company and any lender of money, be conclusive evidence of the power of the directors to borrow such moneys.

The receipt of the directors, or any two of them, shall, as between the company and any lender of money, be conclusive evidence of the power of the directors to borrow such moneys.

The receipts of the directors, or any two of them, shall in all other instances be effectual discharges for any moneys or securities received by them.

Duties of Managers.

The managers shall conform to any regulations imposed on them by the directors, and shall, whenever required by the directors, render to them an account of all transactions matters and things relating to the company, or its affairs, over which the managers have control, or of which they have cognizance.

Where similar powers are given to the directors and managers, either party may exercise the same, with this qualification, that if the directors prohibit the exercise of any such powers, the managers shall thereupon cease to exercise the same.

Duties of other Officers.

The secretary shall keep the books and accounts of the company; he shall also be the treasurer of the company, and perform such other duties as may be required by the directors, finding such security as the directors shall require.

The solicitors shall conduct all the law business of the company.

The bankers shall have the custody of such property of the company as is entrusted to them by the directors.

All other officers and servants shall perform such duties as may be assigned to them by the directors or managers.

PART VI.

DIVIDENDS, ACCOUNTS, AND NOTICES.

Sinking Fund.

There shall be set apart out of the profits of the company in each year a sum to be from time to time determined by the company, at their annual meeting, such sum being not less in respect of any year than ten per cent. of the net profits of the company in that year.

The sum so set apart shall be carried to the account of a fund to be called "The sinking fund," and such fund shall be considered as a provision for the repayment of the subscribed capital, on the expiration of the leases hereby directed to be purchased, or for the payment of any sums required to renew such leases, if it be thought desirable by the company to renew them.

The sinking fund may be invested by the directors in Government, or real securities, or on the debentures or debenture stock of any railway company in the United Kingdom paying a dividend.

Dividends and Reserved Fund.

The directors may, whenever they think expedient, declare a dividend to be paid to the members, in proportion to their shares.

No dividend shall be payable except out of the profits arising from the business of the company, after setting apart the sum hereinbefore directed to be carried to the sinking fund.

The directors may deduct from the dividends payable to any member all such sums of money as may be due from him to the company on account of calls or otherwise.

Notice of any dividend that may have been declared shall be given to each member in manner hereinafter mentioned.

No dividend shall bear interest as against the company.

The directors may before recommending any dividend set aside out of the profits of the company such sum as they think proper as a reserved fund to meet contingencies, or for equalising dividends, or for repairing or maintaining the works connected with the business of the company, or any part thereof, and the directors may invest the sum so set apart as a reserved fund upon any of the securities hereinbefore mentioned.

Accounts.

(See Table A.)

Audit.

(See Table A.)

Notices.

(See Table A. or "United Millers' Company.")

PART VII.

ARBITRATION.

If any difference, the manner of deciding which is not hereinbefore prescribed, or which is directed to be settled by arbitration without further directions, arises between any member trustee or other person or bodies of persons to whom the regulations of these presents apply, such difference shall, unless the parties agree to refer the same to a single arbitrator, be settled by three arbitrators, of whom one shall be chosen by each of the parties to the difference, and the third by the two arbitrators first chosen.

The decision of any two of the arbitrators shall be conclusive.

If either party to the difference makes default in appointing an arbitrator for ten days after the other party has given to him notice to appoint the same, such other party may appoint an arbitrator to act in the place of the arbitrator of the defaulting party.

PART VIII.

DISSOLUTION.

If it be proved to the satisfaction of any meeting that the company is unable to pay its debts, such meeting may thereupon declare the company to be dissolved, and require to same to be wound up by the court or voluntarily.

[Names and addresses of subscribers.]

NOTE.—In this form a company is supposed to purchase certain private graving docks and yards, the purchase-money to be paid partly in cash and partly in paid up shares Special provisions relating to the directors and managers are inserted, and a sinking fund is established

No. 18.

Memorandum of Association of the Keinton Stone Company, Limited (*a*).

(1.) The name of the company is "the Keinton Stone Company, Limited."

(2.) The registered office of the company will be situate in England.

(3.) The objects for which the company is established are, the working and sale of the stone and other minerals to be found in the quarries, respectively known as the old quarry, situate in the parish of Keinton, in the county of Somerset, and the new quarry, situate in the same parish. Also the working and sale of the stone slate and other minerals to be found in any other quarries or mines which the company may, by special resolution, declare it expedient to work; with power for the company, in furtherance of the above objects, to purchase or otherwise acquire any leases underleases agreements for leases or other interest in land, whether freehold, copyhold, or leasehold, including easements of all descriptions; to purchase plant minerals and machinery; to erect buildings; to acquire the business of, or to amalgamate with any other company: and to do all such things as are directly or indirectly incidental to the business, or calculated to promote the interests of the company.

(4.) The liability of the members is limited.

(5.) The capital of the company is thirty thousand pounds, divided into fifteen thousand shares of two pounds each.

WE, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

[Names and addresses of subscribers.]

No. 19.

Articles of Association of the Keinton Stone Company, Limited.

Preliminary Arrangements.

(1.) The directors have power to accept leases on behalf of the company, for such term of years, determinable or not on giving notices to the lessor, and subject to such conditions as to re-entry by the lessor on non-

(*a*) See note at end of form.

payment of rent, or on breach of any conditions of the lease, and as to employing a certain number of men, and as to non-assignment of the said leases, and as to doing any matters or things as the directors may think fit, of the following properties, (that is to say :)—

(a.) Of all the beds of stone ores minerals and mineral produce found, or to be found within, under or upon all those parcels of land, commencing at the river, and ascending to the boundary line on the hill, commonly known by the name of the Meadow Frith, with the pitmen's cottages and other erections machinery engine-houses, water-leats water-wheels and other fixtures.

(b.) Of all the beds of stone found or to be found within under or upon all those two farms known by the respective names of and containing by admeasurement one hundred and seventy acres, or thereabouts, situate in the said parish of Keinton.

And also to purchase all plant machinery, and fixtures in, upon, or belonging to the quarries and works above-mentioned, and all or any portion of the stock of stone thereon.

(2.) There may be paid allotted reserved or granted, in respect of the above-mentioned properties, to such persons as the directors may deem entitled to receive the same, any royalties, and any sum of cash not exceeding ten thousand pounds, and any number of paid up shares not exceeding two thousand five hundred (a).

(3.) Subject to the above conditions, the directors may acquire the properties hereby authorised to be acquired, or any of them, or any part or parts thereof respectively or such other properties yielding stone, as they may think desirable, in such manner, and subject to such conditions as to title and as to paying the expenses of the said leases, and, generally as to doing any other thing they may think expedient, with a view of carrying into effect such purchases, as they may think fit.

(4.) The directors may contract to pay the money to be paid for the leases properties and works by instalments, and may pay interest on any unpaid portion thereof at such rate as may be agreed upon between them and the parties entitled to receive such purchase or other money.

(5.) The directors may issue bonds or debentures or otherwise charge any portion of the property of the company, for the purpose of securing any

(a) See note, supra, p. 629.

unpaid instalments and the interest thereon, and may in any mortgage grant to the mortgagee a power of sale, and a power of distress and of re-entry, in the event of the non-payment of any instalments or of any interest at the time appointed for payment thereof.

(6.) The directors may issue as paid up a sufficient number of shares to carry into effect any of the purposes of these articles in respect of which paid-up shares are authorised to be issued; and the holder of any such shares shall be credited in the books of the company with the full amount of all calls due thereon.

(7.) A call shall be deemed to have been made at the time when the resolution of the directors authorising such call was passed.

(8.) The directors may, out of the moneys for the time being in their hands, pay all expenses incurred by the promoters or others in getting up and establishing the company, including the cost and preparation of these presents, and the costs of registration.

NOTE.—This form shows the mode in which private quarries or any similar property may be purchased and worked by a limited company.

For the remaining provisions copy Table A, or the United Millers' Company

No. 20.

Memorandum of Association of the Brazilian Grain Carrying Company, Limited.

(1.) The name of the company is the Brazilian Grain Carrying Company, Limited.

(2.) The registered office of the company will be situate in England.

(3.) The objects for which the company is established are, the trafficking by means of barges boats and ships in grain and other agricultural produce and in merchandise, along the canals rivers lakes and coasts of Brazil and other parts of South America, with power in furtherance of the above trafficking or in addition thereto to export or import on commission or on behalf of the company grain or other agricultural produce and merchandise from or into South America, or elsewhere into or from any other country. And the becoming carriers along such inland navigation as aforesaid or by

sea of grain or other agricultural produce and merchandise whether belonging to the company or to others, and as incident to the above objects, the purchase and sale on commission or on behalf of the company, of grain agricultural produce or merchandise, the purchase of barges boats or ships propelled by steam or otherwise, the acquisition of storehouses warehouses and offices, the providing where necessary means of land transport and conveniences for shipping and unshipping goods, and lastly, the doing all such other things as are incidental or conducive to the attainment of the above objects.

(4.) The liability of the members is limited.

(5.) The capital of the company is two hundred thousand pounds, divided into one thousand shares of two hundred pounds each.

WE, the several persons whose names and addresses are subscribed are desirous of being formed into a company, in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

[Names and addresses of subscribers.]

No. 21.

COMPANY LIMITED BY GUARANTEE, AND NOT HAVING A CAPITAL DIVIDED INTO SHARES.

Memorandum and Articles of Association of the Barsetshire Mutual Cattle Assurance Association, Limited (a).

Memorandum of Association.

(1.) The name of the company is the Barsetshire Mutual Cattle Assurance Association, Limited.

(2.) The registered office of the company will be situate in England.

(3.) The objects for which the company is established are—

(1.) The mutual insurance of members of the Association against loss in cattle, by or in consequence of the disease called *the cattle plague* or *rinderpest*, or the disease called *pleuro-pneumonia*.

(2.) The adoption and discharge of obligations undertaken before the

(a) This form contains provisions for local management of the insurance and general business of the association, which may be adapted to a mutual assurance association formed for almost any purpose.

date of this memorandum, by the Barsetshire Mutual Cattle Assurance Association.

(3.) The doing of all things from time to time conducive to the objects of the Association, or any of them, or incidental to or convenient in the exercise of any of its powers.

(4.) Every member of the Association undertakes to contribute to the assets of the Association in the event of the same being wound up during the time that he is a member, or within one year afterwards, for payment of the debts and liabilities of the Association contracted before the time at which he ceases to be a member, and of the costs charges and expenses of winding up the same, and for the adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding five pounds.

WE, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association.

Names, Addresses, and Descriptions of Subscribers.

1. Richard Horner, of	,	, Esquire.
2. John Smith, of	,	, Farmer.
3. John Samuel Thomson, of	,	, Farmer.
4. James Brown, of	,	, Farmer.
5. Thomas Brown, of	,	, Farmer.
6. Thomas Robinson, of	,	, Gentleman.
7. Thomas Smith, of	,	, Accountant.

Dated the day of 18 .

Witness to the above signatures,

R. C. Jones, Solicitor, Barchester,

No. 22.

Articles of Association.

Preliminary.

(1.) For the purposes of registration the number of the members of the Association is declared to be unlimited.

(2.) These articles shall be construed with reference to the provisions of the Companies Acts 1862 and 1867, and terms used in these articles shall

be taken as having the same respective meanings as they have when used in those Acts.

In these articles, the term "cattle" means bulls, oxen, cows, and heifers, and calves not less than six months old, and the term "beast" means an animal comprised in the term cattle.

Membership.

(3.) Subject to the provisions of these articles, any person owning cattle within the county of Barset may effect an insurance on those cattle with the Association.

An insurance shall not be effected except on all the cattle of the person insured within the county of Barset; where, however, the same person has separate holdings in different parts of the county, it shall be in the discretion of the general committee of the Association to permit him to effect an insurance, not comprising all his cattle on all the holdings, subject to any conditions that seem to the committee expedient.

Where a person has a holding on the border of the county of Barset extending into an adjoining county, it shall be in the discretion of the general committee to permit him to effect an insurance, comprising his cattle on the entire holding.

(4.) No cattle dealer or butcher shall be permitted to effect an insurance with the Association, and if any person being a cattle dealer or butcher effects an insurance with the Association, the policy shall be void.

(5.) An person keeping cattle in a town during any part of the year shall not be permitted to effect an insurance with the Association, except by special leave of the general committee, which leave they may give if they think fit, subject to any conditions that seem to them expedient.

(6.) The Association shall not insure cattle kept on a public ley, and if any person after effecting an insurance on any beast puts it on a public ley he shall not be entitled to compensation for loss of it, as long as it is kept on the public ley.

Any such person having put any beast on a public ley, shall, on taking it off the ley, be subject to the following rules:—

(1.) He shall, during at least twenty-one days after taking it off the ley, keep that beast completely separated from his other cattle.

(2.) He shall not be entitled to any compensation in respect of the loss of that beast, unless it is free from cattle plague and pleuro-pneumonia during that period of twenty-one days.

But insured cattle may be agisted on any land within the county of Barset, not being a public ley.

(7.) If a person insured purposely turns any beast belonging to him out to graze on any public highway or turnpike road his policy shall be void.

(8.) Every person shall be deemed to have agreed to become a member of the Association who effects an insurance with the Association in pursuance of these articles. Such a person is called an insured member.

Every person (other than an insured member) shall be deemed to have agreed to become a member of the Association, who gives a donation in aid of the funds of the Association of 10*l.* or upwards. Such a person is called a non-insured member.

General Meetings.

(9.) A general meeting of the Association shall be held at Barchester on the third Saturday in June, 18 .

(10.) A general meeting shall be held at Barchester in every subsequent year, on the third Saturday in June.

The general committee, may, however, on any occasion, if it seems to them expedient, appoint another place or another Saturday in June for the holding of such meeting.

(11.) The above-mentioned general meetings shall be considered and called ordinary general meetings. All other general meetings shall be considered and called extraordinary general meetings.

(12.) The general committee may at any time (even if they think fit before the first ordinary general meeting) call an extraordinary general meeting.

(13.) An extraordinay general meeting may at any time (even before the first ordinary general meeting) be called on the requisition of members as follows :

Any such requisition shall be in writing, and signed by twenty or more members insured on an aggregate declared value of not less than 10,000*l.* It shall express the object of the proposed meeting. It shall be left at the

registered office of the Association. The general committee shall thereupon call a general meeting. If they fail to do so for fourteen days from the leaving of the requisition, any twenty or more members qualified as aforesaid may call a general meeting.

(14.) Fourteen days notice of every general meeting, ordinary or extraordinary, specifying the place day and hour of meeting, and in case of special business, the nature of such business, shall be given by advertisement, inserted in two newspapers, published in the county of Barset.

Notice of any meeting at which a resolution for a call or for winding up the Association is to be considered, shall also be served on the members seven days at least before the day of meeting; but non-receipt of such notice by any member shall not affect the validity of the proceedings at the meeting.

(15.) All business transacted at an extraordinary general meeting, and also all business transacted at an ordinary general meeting, other than the considerations of the accounts, and of the report of the auditors, and of the ordinary report of the general committee, is special business.

(16.) No business other than such as is specified in the notice of an extraordinary general meeting may be transacted thereat.

(17.) No business shall be transacted at any general meeting unless there are personally present at the time appointed for the meeting, or within one hour thereafter, at least ten members.

If at the expiration of such hour ten members are not present, the meeting, if called on the requisition of members, shall stand *ipso facto* dissolved; but in any other case it shall stand adjourned to the next business day at the same time and place, and if then and there ten members are not present it shall stand adjourned *sine die*.

(18.) The chairman of the general committee shall preside as chairman at every general meeting, but if at any meeting he is not present within fifteen minutes after the time appointed for the meeting, the members present shall choose one of their number to be chairman of the meeting.

(19.) The chairman, with the consent of the meeting, may adjourn any meeting from time to time, and from place to place; but no business shall be transacted at any adjourned meeting, other than business left unfinished at the meeting from which the adjournment was made.

(20.) Every motion submitted to a meeting shall be decided in the first

instance by a show of hands, and in case of an equality of votes the chairman shall have a second or casting vote.

(21.) A declaration by the chairman of a meeting, that a motion has been carried on a show of hands, shall be conclusive (and an entry to that effect in the book of proceedings of the Association shall be sufficient evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against the motion), unless immediately on such declaration a poll is demanded in writing by at least five members entitled to vote.

(22.) If a poll is demanded, it shall be taken then and there, or at such time and place, and either by open voting or by ballot, as the chairman directs.

A resolution carried according to the result of the poll, shall be deemed the resolution of the meeting at which the poll was demanded.

In case of an equality of votes at the poll, the chairman of the meeting shall have a second or casting vote.

Votes.

(23.) Every insured member has one vote for 1,000*l.* or any less amount of declared aggregate value comprised in his policy, and an additional vote for every complete 100*l.* of such value comprised therein, after the first 1,000*l.*

Every member insured or non-insured, has one vote for 50*l.* or any less amount (not less than 10*l.*) of donation given by him in aid of the funds of the Association, and an additional vote for every complete 50*l.* of donation after the first 50*l.*

(24.) If any member becomes a lunatic, the committee of his estate may vote for him.

(25.) If two or more members are jointly insured in one policy, the member whose name stands first on the register of members, in respect of that policy, is alone entitled to vote in respect of it.

(26.) A member is not entitled to vote whilst any call due from him remains unpaid.

(27.) On a motion for a resolution for a call or for winding up the Association, or for a special or extraordinary resolution within the meaning of

the Companies Act 1862, votes may be given either personally or by proxy. In all other cases votes must be given personally.

(28.) A proxy is appointed by an instrument under the hand of the appointor, or if the appointor is a corporation under the common seal, and dated the day of the signing or sealing thereof.

(29.) A person cannot act as proxy, unless at the time of appointment he is a member qualified to vote, nor unless the instrument of his appointment is deposited at the registered office of the Association at least three clear days before the time appointed for the meeting at which he proposes to vote.

General Committee.

(30.) The subscribers to the memorandum of association and such other members as they from time to time nominate shall constitute the general committee until the first ordinary general meeting, when they shall go out of office, and the Association shall elect a general committee, the members of the original general committee being eligible.

(31.) At each subsequent ordinary general meeting the then general committee shall go out of office, and the Association shall elect a new committee, the members of the outgoing committee being eligible.

(32.) The general committee shall meet at such times and places as they think fit, and may from time to time make general rules for the summoning and holding of their meetings, and for the regulation of proceedings and transaction of business thereat, and for determining the quorum necessary for the transaction of business.

The general committee shall appoint a chairman of their meetings, and determine the period for which he is to retain office.

Their meetings shall be presided over by the chairman, if present; but in case he is not present within fifteen minutes after the time appointed for a meeting, the members then present shall choose one of their number to preside at that meeting. Any question arising at a meeting of the general committee shall be decided by a majority of votes; and in case of equality, the chairman shall have a second or casting vote.

(33.) The general committee may from time to time appoint a sub committee or sub-committees, consisting of such member or members of their body as the general committee think fit; and may grant to any such sub-

committee power on behalf of the Association to do any acts relating to the affairs of the Association which the general committee could lawfully do, and the doing of which the general committee think fit to entrust to the sub-committee.

The general committee may from time to time make general rules for the summoning and holding of meetings of any such sub-committee, and for the regulation of proceedings and transaction of business thereat, and for determining the quorum necessary for transaction of business, and for regulating the appointment and defining the powers of a chairman.

(34.) The acts of the general committee shall be valid, notwithstanding any vacancy in the general committee.

(35.) The general direction of the business of the Association is vested in the general committee, who, in addition to the powers by law, or expressly by these articles conferred upon them, may exercise all powers vested in the Association, and not by law or by these articles required to be exercised in general meeting, subject, nevertheless, to the provisions of the Companies Acts 1862 and 1867, and of these articles, and to such (if any) regulations (not being inconsistent with these provisions) as are from time to time prescribed by the Association in general meeting. But no regulation made by the Association in general meeting shall invalidate any prior act of the general committee which would have been valid if the regulation had not been made.

Local Committees.

(36.) The general committee shall from time to time appoint such and so many members of the Association as they think fit, to be a local committee for each petty sessional division or other district of the county; and may, if they think fit, authorise any local committee to add to its number from time to time, in case it appears to such local committee expedient.

(37.) The general committee may from time to time make general rules for the summoning and holding of meetings of any local committee, and for the regulation of proceedings and transaction of business thereat, and for determining the quorum necessary for transaction of business, and for regulating the appointment and defining the powers of a chairman

(38.) It shall be the duty of each local committee to receive proposals for insurance, and send the same to the general committee with a report thereon,

and to receive and remit to the general committee money payable to the Association for poundage or calls, or otherwise, and generally to assist in carrying on the business of the Association, under the direction of the general committee.

Officers.

(39.) The general committee shall appoint and may remove the secretary treasurer and veterinary surgeons of the Association, and the other officers of the Association, except the secretaries of the local committees.

Each local committee shall appoint and may remove their secretary.

The remuneration of the officers clerks and servants of the Association shall be fixed by the Association in general meeting, save that the remuneration of the first auditors shall be fixed by the general committee.

(40.) The receipts of the secretary and treasurer respectively of the Association, and those of the respective secretaries of local committees shall be sufficient discharges for money payable to the Association.

Insurance.

(41.) Any person desiring to effect an insurance with the Association shall sign a proposal, declaring (among other things) the aggregate value of the cattle to be insured.

He shall deliver the proposal to the general committee, or to the local committee for the district within which his holding or his principal holding is.

Where there has been any case of cattle plague or rinderpest on any holding adjoining to his within six weeks next before the date of the proposal, the general committee may either reject the proposal or require payment of such additional poundage as they may think fit.

(42.) For the purpose of insurance no beast shall be taken to be of greater value than 20*l.*

(43.) If the proposal is accepted, the particulars stated in the proposal shall form the basis of the contract between the insured and the Association, and if there is any fraud misrepresentation or suppression committed or made in or about the proposal, or otherwise in or about the effecting of the insurance, the policy shall be void.

(44.) On the person effecting an insurance receiving his policy, he shall pay

to the Association the following poundage on the aggregate declared value of the cattle insured, namely :—

Where there has been any case of cattle plague or rinderpest on any holding adjoining to his within six weeks next before the date of his proposal, such poundage as the general committee may think proper.

Where there has been any case of pleuro-pneumonia on any holding adjoining to his, within three calendar months next before the date of his proposal, twopence in the pound.

Where, on a report of a local committee, the general committee are satisfied that pleuro-pneumonia exists in the district of the local committee, in such a virulent form as to seriously increase the risks of the Association, then, with respect to that district, such poundage as the general committee from time to time direct, not being less than one penny or more than twopence in the pound. In all other cases, one penny in the pound.

(45.) If any person insured with the Association effects an insurance on his cattle, or any of them, with any other body, the policy granted to him by the Association shall be void.

(46.) Where a person whose cattle are insured with the Association buys other cattle the following rules shall have effect :—

(1.) He shall, within three days after the delivery to him of the cattle so bought, give notice thereof to the secretary of the local committee for his district ; and, in case the declared aggregate number of cattle comprised in his policy is increased by the purchase, he shall, within the same three days, apply to the Association for an insurance on the cattle so bought :

(2.) If he fails to do so, then at the expiration of those three days, his existing policy shall be void :

(3.) He shall, during at least twenty-one days after the delivery to him of the cattle so brought, keep them completely separated from his other cattle :

(4.) He shall not be entitled to any compensation in respect of loss of any cattle so bought, unless they are free from cattle plague and pleuro-pneumonia during that period of twenty-one days.

(47.) Every insurance terminates at the end of the 31st day of May in

each year, and the year ending with the 31st day of May is called the year of insurance.

At the end of any year of insurance (but not at any other time) a member may increase or diminish the amount of the declared aggregate value of cattle comprised in his policy.

If a member does not so increase or diminish the amount, his policy shall be deemed at the end of each year of insurance to be renewed, without alteration, for another year of insurance.

(48.) Whenever a person effects an insurance or further insurance, he is liable to pay the amount of all calls made during so much of the current year of insurance as is then past, in respect of the declared aggregate value comprised in the insurance or further insurance.

(49.) An insured member not having received compensation for loss within any given year of insurance may cease to be a member at the end of that year of insurance, but not sooner, on giving to the Association at least three calendar months notice in writing of his intention to do so.

An insured member having received compensation for loss within any given year of insurance, may cease to be a member at the end of the year of insurance next after that current at the time of his receiving compensation, but not sooner, on his giving to the Association at least three calendar months notice in writing of his intention to do so.

A non-insured member may cease to be a member at any time on giving to the Association three calendar months notice in writing of his intention to do so.

(50.) Wherever by these articles a policy is declared to be void, all money paid to the Association by the insured on account of the policy shall be forfeited to the Association, and the person to whom the policy was granted shall, to all intents, except as to title to compensation or as to the right to share in the surplus assets in the event of the winding up of the Association, be deemed to continue an insured member until the end of the then current year of insurance, but no longer.

(51.) On the death of an insured member his policy may be transferred and continued to his representatives, to whom the cattle therein comprised belong, by indorsement on the policy.

(52.) Policies shall be issued by the Association without charge to the insured for stamp duty, or on any other account (except in respect of poundage).

Compensation.

(53.) In case a beast comprised in an insurance is taken ill with a disease appearing to be the cattle plague or rinderpest, the owner shall give notice thereof to the secretary of the local committee for his district, and to the inspector acting for his district under the orders of the Privy Council.

In the event of the death of the beast, the Association shall require the certificate of the inspector as to the cause of death, and shall accept it as conclusive.

In that event the Association shall pay to the owner as compensation two-thirds of the value of the beast as declared on insurance.

(54.) In case a beast comprised in an insurance is taken ill with a disease appearing to be pleuro-pneumonia, the owner shall give notice thereof to the secretary of the local committee for his district, and to the veterinary surgeon of the Association for his district.

In case the veterinary surgeon pronounces the disease to be pleuro-pneumonia, then, if the veterinary surgeon so directs, the owner shall kill the beast and dispose of it in the best way practicable.

In the event of the death of the beast the Association shall pay to the owner as compensation two-thirds of its value as declared on insurance, after deduction of the amount (if any) received on its being killed and disposed of by sale.

Where, however, the death of the beast happens within three calendar months after the time of insurance, and there was any case of pleuro-pneumonia on any holding adjoining to the owner's, within three calendar months next before the date of the proposal for insurance, the owner shall not be entitled to any compensation in respect of the beast.

(55.) Payments of compensation for loss of a beast shall be made as follows :—

One-half within one calendar month after the receipt, by the secretary of the local committee of the district, the inspector or veterinary surgeon's certificate of the cause of death.

The other half within three calendar months after such receipt.

Calls.

(56.) The general committee may, from time to time, make calls on the insured members to an amount not exceeding in the whole, in any year of insurance, the rate of two shillings in the pound on the amount of the aggregate declared value comprised in the several policies.

A general meeting, ordinary or extraordinary, may at any time, and from time to time, by resolution passed by the votes of not less than three-fourths of the members present, personally or by proxy, make a call on the insured members, not exceeding the rate of one shilling in the pound on the amount of the aggregate declared value comprised in the several policies.

Investments.

(57.) The money of the Association not immediately required shall, from time to time, as the general committee think expedient, be invested, under the direction of the general committee, in government securities or on railway companies' bonds or debentures, and shall remain so invested until required for the purposes of the Association; and the proceeds of such investments shall be, from time to time, accumulated by further like investment, or applied for the purposes of the Association, as the general committee think fit.

Accounts and Audit.

(58.) At every ordinary meeting the general committee shall lay before the meeting a statement of the accounts of the Association, made up to a date not more than six months before the meeting, and beginning from the time when the last preceding statement was made, or in case of the first statement, from the commencement of the Association; and every such statement shall be accompanied by a report of the general committee as to the state of the Association.

(59.) Before each ordinary meeting the accounts of the Association shall be examined, and the correctness of the general committee's accounts ascertained by the auditors.

(60.) The first auditors shall be appointed by the general committee

Subsequent auditors shall be elected yearly by the ordinary general meeting.

(61.) The auditors may be members of the Association, but a member of the general committee, or an officer, clerk, or servant of the Association is not eligible during his continuance in office.

An auditor going out of office is re-eligible.

(62.) If any casual vacancy occurs in the office of auditor (after the first auditors), the general committee shall forthwith call an extraordinary general meeting for the purpose of supplying the same.

(63.) The auditor shall be supplied with a copy of the general committee's statement of accounts, and it shall be their duty to examine the same, with the accounts and vouchers relating thereto.

They shall have a list delivered to them of all books kept by the Association, and shall have access to the books and accounts of the Association; they may at the expense of the Association employ accountants or other persons to assist them in investigating the accounts, and may in relation to the accounts examine any member of the general committee, or of any local committee, or any officer of the Association.

They shall make a report to the members on the general committee's statement of accounts, and they shall therein express their opinion, whether or not the statement is a full and fair statement, properly drawn up, so as to exhibit a true and correct view of the state of the Association's affairs: and in case they have called for explanations or information from the general committee, or any local committee, they shall therein state whether they have obtained the same from the general committee, or local committee, and whether they have found the same satisfactory; and their report shall be read with the report of the general committee, at the ordinary general meeting.

Forms.

(64.) Forms of proposals policies claims proxy papers and other instruments, shall be such as the Association in general meeting from time to time direct. In the absence of any such direction with respect to any instrument requisite for carrying on the business of the Association, the general committee may from time to time prescribe the form of that instrument.

Notices.

(65.) A notice to be served under these articles on a member is to be served, either personally, or by pre-paid letter, sent by post, addressed to him at his registered place of abode.

A notice served by post is to be taken as served at the time when the letter containing it would be delivered in the ordinary course of post. To prove the fact and time of service, it shall be sufficient to prove that the letter was properly addressed, and was put into the post-office, and the time when it was put in, and the time requisite for its delivery in the ordinary course of post.

Service on the member whose name stands first on the register of members as one of several joint policy holders is equivalent to service on all holders of the policy.

Arbitration.

(66.) If any difference arises between any person insured and the Association, respecting any claim on a policy, it shall be referred to the arbitration of two arbitrators, one appointed by each party, or in the event of the disagreement of the arbitrators, of an umpire appointed by them before entering on the reference.

Arrangements with original Associations.

(67.) The Association shall indemnify the members and managers of the Barsetshire Mutual Cattle Assurance Association, originally established but not registered (hereinafter called "the original association") in respect of all liabilities incurred by them, or any of them, in or about the establishment or carrying on of the original association.

The Association shall offer a policy to every member of the original association, to be accepted in satisfaction of his claims against the original association,

Every such policy shall be granted on the terms embodied in these articles; and for that purpose a fresh proposal and declaration shall be required; but credit shall be given for all poundage paid to the original association by the person effecting the insurance.

If any member of the original association refuses to accept a policy of the Association, he shall be entitled to receive from the Association all money paid by him to the original asssociation in respect of insurance.

A donor of 10*l.* or upwards to the original association (not being an insured member of the Association) shall be deemed to be a non-insured member of the Association, as if his donation had been in aid of the funds of the Association, unless within one calendar month after the date of these articles he gives notice in writing to the Association that he declines to be a non-insured member thereof.

Winding-up.

(68.) In the event of the winding-up of the Association the surplus assets (if any) shall be divided among the insured members in proportion to the amounts of declared aggregate value comprised in their respective latest policies.

[Names, addresses, and descriptions of subscribers.]

FORMS BELONGING TO THE FOREGOING MEMORANDUM AND ARTICLES.

(1.)

The Barsetshire Mutual Cattle Assurance Association, Limited.

Proposal for Insurance.

I of hereby propose to the Asssociation to effect with the Association an insurance on my cattle, in pursuance of the memorandum and articles of association.

For the purpose and as part of this proposal, I declare as follows:—

(1.) The schedule annexed to this proposal (which I agree shall be deemed part thereof) contains a true and correct description of all the cattle now belonging to me within the county of Barset.

(2.) Those cattle are kept on my holding at

(3.) I am not a cattle dealer or a butcher, and I do not keep my cattle, or any of them, in a town during any part of the year.

(4.) All my cattle within the county of Barset are now entirely free from the cattle plague, or rinderpest, and have been so for the last six weeks.

(5.) All my cattle within the County of Barset are entirely free from pleuro-pneumonia, and have been so for the last six calendar months.

(6.) There has not been any case of cattle plague, or rinderpest, on any holding adjoining to my said holding within the last six weeks.

(7.) There has not been any case of pleuro-pneumonia on any holding adjoining to my said holding within the last three calendar months.

(8.) I have not effected and insurance on my cattle within the county of Barset, or any of them, with any body other than the Association.

I hereby agree that the particulars stated in this proposal shall form the basis of the contract between myself and the Association, and that, if there is any fraud, misrepresentation, or suppression committed, or made by me, or on my behalf, in or about this proposal, or otherwise in or about the effecting of the proposed insurance, the policy shall be void, and all money paid to the Association by me on account of the policy shall be forfeited to the Association.

Dated this day of

Signed,

Witness

THE SCHEDULE ABOVE REFERRED TO.

CLASS I. Beasts over two years old			CLASS II Beasts over one year old, and not over two.			CLASS III. Beasts over six months old, and not over one year.		
Number	Average Value	Total	Number	Average Value	Total	Number	Average Value	Total
	£	£		£	£		£	£

AGGREGATE VALUE.

Class I. . . .	
„ II. . . .	
„ III. . . .	
Total £	

(2.)

The Barsetshire Mutual Cattle Assurance Association, Limited.

Form of Policy of Insurance.

No.

Aggregate declared value £

Poundage,

This policy, issued by the "Barsetshire Mutual Cattle Assurance Association, Limited," witnesseth, that in consideration of the agreement in the

proposal of , of
dated the day of 18 contained, whereby he agreed that the particulars stated in the proposal should form the basis of the contract between himself and the Association, and that if there was any fraud, misrepresentation, or suppression committed or made by him, or on his behalf, in or about that proposal, or otherwise in or about the effecting of the proposed insurance, the policy should be void, and all money paid to the Association by him on account of the policy should be forfeited to the Association (which proposal has been accepted by the Association), and of the sum of paid to the Association by him on his receiving this policy (the receipt of which the Association hereby acknowledge), the Association have agreed and hereby agree with him to make to him compensation in respect of loss of cattle described in the proposal, in the events and to the amount, and subject and according to the conditions and provisions in the articles of association specified and contained.

In witness whereof the said Association have hereunto set their common seal, the day of 18.

Witness to sealing,

Signed,

(3.)

Barsetshire Mutual Cattle Assurance Association, Limited.

Notice of Purchase of Cattle.

To the Secretary of the Local Committee.

Division.

I hereby give notice that I have purchased from Mr. of the number of beasts specified in the schedule hereunder written, and that they were delivered to me on the day of , and I further give notice that the declared aggregate number of cattle comprised in my policy is (*a*) increased by the said purchase [and that I wish to insure additional beasts.] (*b*)

Dated the day of 18

Signed,

(*a*) If there is no increase in number, insert the word "not."

(*b*) If there is no increase in number, strike out the words in brackets.

THE SCHEDULE ABOVE REFERRED TO.

CLASS I.	CLASS II	CLASS III
Beasts over two years old.	Beasts over one year, and not over two.	Beasts over six months old, and not over one year

NOTE.—*Where the number of cattle is increased, a proposal for insurance must be signed as to the additional number.*

These forms and also forms of proposal, claim for compensation and veterinary surgeon's certificate, can be obtained from the local agents of the Association.

(4.)

The Barsetshire Mutual Cattle Assurance Association, Limited.

Claim for Compensation.

I of declare that the beast belonging to me hereinafter described, and referred to in the certificate here unto annexed, was comprised in the policy of insurance, numbered dated the day of 18 , issued by the Association, namely (*a*),
and that it was insured in class at the value of £
Dated this day of 18
Signed

(*a*) Here describe the beast.

(5.)

Certificate of Veterinary Surgeon.

To the Secretary of the Barsetshire Mutual Cattle Assurance Association, Limited.

I hereby certify that a belonging to Mr. of was seized with on the day of .

(*State the result.*)

Veterinary Surgeon.

Inspector for the Division.

Dated this day of 18 .

(6.)

Receipt for Compensation.

Claim No. .

Received the day of 18 , of the Barsetshire Mutual Cattle Assurance Association, Limited, pounds shillings, and pence, being the instalment of compensation payable to me, for loss of beast by , in pursuance of the Inspector's certificate, dated the day of last.

£ " "

STAMP.

No. 23.

COMPANY LIMITED BY GUARANTEE AND HAVING A CAPITAL DIVIDED INTO SHARES.

Memorandum and Articles of Association of the Belton Hall and Park Company, Limited.

Explanation of objects of Company.

The object of the company is to purchase a park in the neighbourhood of a large town, with the intention of ultimately devoting it to the use of the public.

The purchase-money has, in the first place, to be paid by certain promoters.

The mode of raising the money is, 1st, by donations; 2ndly, by an issue of shares of two classes, that is to say, A shares, of £1 1s. each, giving admission to the park; and B shares, of £1 1s. each, paying a dividend, but not giving admission to the park.

The dividend is proposed to be raised by letting the park for fêtes, and so forth.

The governing body of the company is varied, according to the condition of its finances.

First, the promoters must be repaid their purchase-money.

The first step, then, is to constitute the promoters absolute managers, and to allow them full powers of control over the property, till they have been repaid their outlay, and this period, during which the promoters are the managers, is called the period of interim management.

The company, in its corporate capacity, is a dividend paying body, for the purpose only of discharging the price of the estate.

Trustees therefore are constituted, who hold a number of B shares, equal to the amount of donations, and are intended ultimately to acquire the whole number of both A and B shares.

Assuming the period of interim management to be expired, the place of the managers is taken by a council of thirty-six, elected as follows:—

One-third by the A shareholders,
One-third by the B shareholders,
One-third by the trustees.

The council have the entire superintendence of the affairs of the company, but the daily administrative duties are performed by managers under the control of the council.

As the company progresses, the trustees are empowered, from time to time, to purchase all the shares of the company, and when that operation is complete, the council disappear, the trustees take their place, and the park is open to the public, under such regulations as the trustees think fit.

The trustees moreover have power to transfer the park to any public body, to be held in trust for the public.

Memorandum of Association.

(1.) The name of the company is "The Belton Hall and Park Company, Limited."

(2.) The registered office of the company will be situate in England.

(3.) The objects for which the company is established are to purchase Belton Hall, in the parish of Belton, in the county of Somerset, and the adjoining grounds, comprising about forty-three acres, and such other lands contiguous to, or convenient to be held therewith, as may be deemed expedient, with a view to derive a profit from such purchase, and thereby to

compensate the company for any outlay that may be made on the purchase, maintenance, or improvement of the said hall and premises, but with an ultimate intention, after providing for such compensation, to appropriate the said hall and premises to the use of the public so far as to admit the public thereto, and to apply all profits that may be made to the maintenance and improvement of the said hall and premises, and not for the pecuniary benefit of the company or its members, with power for the company to do or provide anything that may tend to the maintenance or improvement of the said hall or premises, or to the instruction or entertainment of the persons resorting thereto, with power also for the company to lease for a temporary purpose, or for any number of years, all or any portion of the said premises, or any privilege or right on, to, or over the said premises, and, if necessary, to sell the said premises or any portion thereof, or any right or privilege belonging thereto, or to grant life annuities of forty shillings per annum and upwards charged upon the said premises, with power also for the said company to transfer the said premises to any other public body or body corporate who may undertake to carry into effect the public objects of the company, and generally to do all other things which may be incidental or conducive to the objects for which the company is hereby declared to be established.

(4.) Every member of the company undertakes to contribute to the assets of the company in the event of the same being wound up during the time that he is a member, or within one year afterwards, for payment of the debts and liabilities of the company, and the costs, charges, and expenses of winding up the same, and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required not exceeding one pound.

WE, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association.

[Names and addresses of subscribers.]

ARRANGEMENT OF ARTICLES.

Recitals . . . . . .
Preliminary . . . . . .
Capital of Company . . . . . .
Class A shares . . . . . .
Class B shares . . . . . .
Calls . . . . . .
Forfeiture of shares for non-payment of call . . . . . .
Increase of Capital . . . . . .
Interim Managers . . . . . .
Council and Managers . . . . . .
Council. . . . . .
Representatives of A Shareholders . . . . . .
Representatives of B Shareholders . . . . . .
Representatives of the Trustees . . . . . .
Powers of Council . . . . . .
Proceedings of Council . . . . . .
Managers . . . . . .
Disqualification of Managers . . . . . .
Duties of Managers . . . . . .
Proceedings of managers . . . . . .
Officers . . . . . .
Dividends . . . . . .
Accounts . . . . . .
Audits . . . . . .
General Meetings of Company . . . . . .
Trustees . . . . . .
Proceedings of Trustees . . . . . .
Duties of Trustees . . . . . .
Notices. . . . . .
Arbitration . . . . . .
Dissolution . . . . . .
Form A Certificate of Class A shares . . . . . .
Form B Certificate of Class B shares . . . . . .
Form of Transfer of Shares . . . . . .

No. 24.

Articles of Association of the Belton Hall and Park Company, Limited.

WHEREAS by an agreement dated the day of , and made between the Rev. Henry Bromfield, Richard Robinson, and Mary Robinson, for themselves their heirs executors and administrators of the one part, and John Jones, John Smith, Thomas Green, John Thompson, Caleb White, Andrew Brown, and Cæsar White, all of the borough of Belton, in the county of Somerset, for themselves their heirs executors and administrators of the other part, the parties thereto of the other part agreed to purchase the Belton Hall Estate as therein described, comprising in the whole about forty-three acres, for the sum of 50,000*l.*, subject to the stipulations therein contained as to title, payment of the purchase-money by instalments, and other matters, with power for the said parties thereto to rescind or abandon the said agreement for purchase, on payment of such sums, and on such other conditions, as therein mentioned:

And whereas the parties to the said contract of the other part (hereinafter called "the promoters"), entered into the same with the intention of forming a limited company for the objects mentioned in the accompanying memorandum of association.

And whereas considerable delay having occurred in registering the company, the promoters have, in pursuance of a provision contained in the said agreement for sale, entered into possession of the said Belton Hall Estate, and expended, or contracted to expend, large sums in repairs and improvement of the said estate:

And whereas, for the purpose of enabling the promoters to carry into effect the said contract, it has been determined that they shall be appointed "Interim Managers" for such period, and be clothed with such powers as are hereinafter mentioned:

It is agreed as follows:

Preliminary.

(1.) The following words and expressions shall have the several meanings hereby assigned to them, unless there is something in the context repugnant to such construction (that is to say):

Words importing the singular number only shall include the plural number, and words importing the plural number only shall include the singular number

Words importing the masculine gender only shall include females;

The governing body of the company shall mean such body of persons as are hereinafter declared to be for the time being the governing body.

Capital of Company.

(2.) The nominal capital of the company shall consist of £42,000, divided into 40,000 shares of £1 1*s.* each.

(3.) The nominal capital shall be divided into two classes of shares, distinguished by the letters A and B, and such shares may be issued in such manner, and be distributed between the said two classes in such proportions, as the governing body of the company think fit, but any shares so issued shall be subject to be repurchased by the trustees hereinafter appointed in manner hereinafter mentioned.

Class A *Shares.*

(4.) The holder of an A share shall be entitled to the privilege of such free admission to the Belton Hall Estate as is hereinafter mentioned, but he shall not be entitled to receive any dividend or other pecuniary benefit from the company, in respect of such share.

(5.) Every holder of an A share shall, on payment of such sum not exceeding sixpence, as the governing body for the time being of the company direct, be entitled to a certificate in the form marked A in the schedule hereto, and on payment of a similar sum be entitled to a metallic or other token testifying that he is entitled to such free admission as aforesaid.

(6.) If any certificate or token of an A shareholder is worn out or lost, such certificate or token may, on satisfactory proof of its being worn out or lost, be renewed, on payment of such sum, not exceeding sixpence, as the governing body of the company direct.

(7.) The holder of an A share may transfer the same by executing such instrument as is endorsed on the certificate of the share itself, or such other instrument as may be approved by the governing body of the company.

(8.) The governing body of the company may decline to register the transfer of any A share on which any calls remain unpaid.

(9.) The governing body of the company may refuse to register any transferee of an A share who is not approved by them. If the body so refusing are the interim managers, and the transferor feels aggrieved with such refusal, he may appeal to the trustees, who may confine or reverse the

refusal of the interim managers, and if the body so refusing are the managers, he may appeal to the council, who may confirm or reverse such refusal. The decision of the trustees or council, as the case may be, shall be final.

(10.) A holder of an A share may bequeath the same to any person he thinks fit, but if he makes no bequest thereof, it shall not form any part of his personal estate, but shall vest in the trustees, and become part of the reserved fund hereinafter mentioned.

(11.) An A share shall not pass to any assignee in bankruptcy or insolvency, or if held in law so to pass, shall not confer any privilege on such assignee.

(12.) If any female holder of an A share marries, her husband may be registered in her stead, or she may, with the consent of her husband, be retained on the register as a holder of such share in her new name.

(13.) If any holder of an A share is convicted of a felony, or of any act or indecency or other improper conduct within the precincts of the Belton Hall Estate, he shall forfeit his share, which shall vest in the trustees, and become part of the reserved fund. And if any holder of an A share inflicts any wanton injury on the property of the company, he shall also, if the governing body of the company think such forfeiture just, forfeit his share, which shall vest in the trustees, and become part of the reserved fund.

(14.) The transfer books of A shares shall be closed during such time in each year as the governing body of the company determine.

(15.) The Belton Hall Estate shall be open gratuitously to the holders of A shares on all ordinary occasions, and on Sundays, Good Fridays, Christmas days, Bank holidays, and all other public-appointed holidays, at such times and subject to such regulations as may be fixed by the governing body of the company, subject, nevertheless, to the following provisions :—

The holder of an A share may be excluded from the Belton Hall Estate, or any part thereof, during the holding of fêtes, exhibitions, or any other extraordinary entertainment, and he shall not be entitled to attend gratuitously, any lecture, exhibition or other like performance, in which the lecturers, exhibitors, or performers are paid by the company, or in the getting up of which expense is incurred by the company.

If any question arises as to the privileges to which the holders of A shares are entitled, or as to the reasonableness of any restrictions that may be imposed by the governing body of the company, such question shall be referred to the trustees, whose decision shall be final.

Class B *Shares.*

(16.) Every holder of a B share shall be entitled to receive dividends, as hereinafter mentioned, but he shall not, as such holder, be entitled to free admission to the Belton Hall Estate, or to any other privileges.

(17.) If several persons are registered as joint-holders of a B share, any one of such persons may give effectual receipts for any dividend payable in respect of such share.

(18.) Every holder of a B share shall, on payment of such sum, not exceeding sixpence, as the governing body of the company may determine, be entitled to a certificate, in the form marked "B" in the schedule hereto, specifying the share or shares held by him.

(19.) If any certificate of B shares is worn out or lost, it may, on satisfactory proof of its being worn out or lost, be renewed on payment of such sum, not exceeding sixpence, as the governing body of the company may determine.

(20.) The holder of a B share may transfer the same, by executing such instrument as is indorsed on the certificate itself, or such other instrument as the governing body of the company approve.

(21.) The governing body of the company may decline to register the transfer of any B share on which any calls remain unpaid.

(22.) Every holder of a B share shall, on request in writing, be entitled to receive an A share in lieu of one B share.

(23.) The governing body of the company may refuse to register any transferee of a B share who is not approved by them. If the body so refusing are the interim managers, and the transferor feels aggrieved at such refusal, he may appeal to the trustees, who may confirm or reverse the refusal of the interim managers, and if the body so refusing are the managers, he may appeal to the council, who may confirm or reverse the decision of the managers. The decision of the trustees or council, as the case may be, shall be final.

(24.) The executors or administrators of a deceased holder of B shares shall be the only persons recognised as having any title to his shares.

(25.) Any person becoming entitled to a B share in consequence of the death, bankruptcy, or insolvency, of any holder thereof, or in consequence of the marriage of any female holder thereof, may, be registered as a holder,

upon such evidence being produced, as may from time to time be required by the governing body of the company.

(26.) Any person who has become entitled to a B share, in consequence of the death, bankruptcy, or insolvency of any holder thereof, or in consequence of the marriage of any holder, may, instead of being registered himself, elect to have some person to be named by him and approved of by the governing body of the company, registered as a holder of such share.

(27.) The person so becoming entitled shall testify such election by executing to his nominee an instrument of transfer of such B share.

(28.) The instrument of transfer shall be presented to the secretary of the company, accompanied with such evidence as the governing body of the company may require to prove the title of the transferor, and thereupon the transferee shall be registered as a shareholder.

Calls.

(29.) The governing body of the company may from time to time make such calls upon the holders of A and B shares in respect of all moneys unpaid on their shares as they think fit, provided that no one call exceeds two shillings and sixpence per share, nor be made within less than one month after the day appointed for payment of the immediately preceding call, and provided also that fourteen days notice at least is given of each call, and each shareholder shall be liable to pay the amount of calls so made to the persons, and at the time and places appointed by such governing body.

(30.) A call shall be deemed to have been made at the time when the resolution of the governing body authorising such call was publicly announced.

(31.) If before, or on the day appointed for payment ,any shareholder does not pay the amount of any call to which he is liable, then the holder of the share for the time being shall be liable to pay interest upon the same, at the rate of five pounds per centum per annum, from the day appointed for the payment thereof to the time of the actual payment.

(32.) The governing body of the company may, if they think fit, receive from any of the shareholders willing to advance the same, all or any part of the moneys due upon their respective shares beyond the sums actually called for ; and upon the moneys so paid in advance in respect of B shares, or so

much thereof as from time to time exceeds the amount of the calls then made upon the B shares in respect of which such advance has been made, such governing body may pay interest at such rate (not exceeding 4*l.* per centum per annum) as the shareholders paying such sum in advance and the governing body agree upon; but no interest shall be payable in respect of A shares, notwithstanding the calls may be paid in advance, and no interest shall be paid out of capital.

Forfeiture of Share for Nonpayment of Calls.

(33.) If any holder of A or B shares fails to pay any call due on the appointed day, the governing body of the company may at any time thereafter, during such time as the call remains unpaid, serve a notice on him requiring him to pay such call, together with any interest and expenses that may have accrued by reason of such non-payment.

(34.) The notice shall name a further day on or before which such call, interest, and expenses are to be paid; it shall also name the place at which such payment is to be made; it shall also state that in the event of non-payment at or before the time and at the place appointed, the share in respect of which such call was made will be liable to be forfeited.

(35.) If the requisitions of any such notice as aforesaid be not complied with, any share in respect of which such notice has been given may be forfeited by a resolution of the governing body of the company to that effect.

(36.) Any shares so forfeited shall vest in the trustees, and become part of the reserved fund.

(37.) Any shareholder whose shares have been forfeited shall notwithstanding be liable to pay to the company all calls owing upon such shares at the time of forfeiture.

Increase of Capital.

(38.) The governing body of the company may increase its capital.

(39.) Any capital raised by the creation of new shares shall be considered as part of the original capital, and shall be subject to the same provisions in all respects, whether with reference to the payment of calls or the forfeiture

of shares or non-payment of calls or otherwise, as if it had been part of the original capital.

Interim Managers.

(40.) The interim managers shall be the first governing body of the company.

(41.) The parties of the other part to the said agreement of the day of March, , and who are hereinbefore called the promoters, shall be the interim managers of the company.

(42.) The interim managers shall continue in office until they have ceased to be under any liability in respect of their contract for the purchase of the Belton Hall Estate hereinbefore mentioned, unless they previously consent to retire from their office, and the period hereby limited for the continuance in office of the interim managers is hereinaftrer called the period of interim management.

(43.) The interim managers shall be deemed to hold their office in joint tenancy, and in the event of any vacancy occurring in the office of interim manager, the continuing managers may act as if such vacancy had not occurred.

(44.) The interim managers may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit, and determine the quorum necessary for the transaction of business. Questions arising at any meeting shall be decided by a majority of votes of the interim managers present. An interim manager may at any time summon a meeting of the interim managers.

(45.) The interim managers may elect a permanent chairman of their meetings, and determine the period for which he is to hold office; but if at any time he is not present at the time for holding a meeting, the interim managers present may choose a chairman.

(46.) The chairman for the time being of the meeting of interim managers shall, in the case of an equality of votes, have a second or casting vote.

(47.) The interim managers, or other the governing body for the time being of the company, may prosecute the objects thereof whenever, in their opinion, an amount of capital of the company has been subscribed for sufficient to make it probable that the company will succeed.

(48.) The interim managers of the company, out of any moneys of the

company for the time being in their hands, shall pay or repay themselves and any other persons associated with or employed by them in the formation of the company, all payments or disbursements they have already made or are liable to make in respect of the formation of the company, or in relation to the contract so entered into by them as aforesaid, in their character of promoters. And they shall also pay any costs, charges, and expenses which they or any such other person as aforesaid have incurred or may incur, in or about the formation of the company, the preparation of these articles or other matters, including the fees and other expenses of the registration of the company.

(49.) The interim managers may indemnify themselves out of any moneys of the company for the time being in their hands, for all sums they may have expended, or contracted to expend, in respect of such repairs and improvements of the Belton Hall Estate as are hereinbefore mentioned.

(50.) The interim managers shall, if possible, carry into effect the said agreement of the day of for the purchase of the Belton Hall Estate, but they shall not incur any personal liability if they rescind such agreement, or allow the same to be rescinded, on the terms therein mentioned.

(51.) The interim managers shall out of any moneys of the company for the time being in their hands, pay all instalments and other sums payable by them under the said agreement, and all other costs, charges, and expenses which they have incurred, and may incur, in relation to the said agreement, the investigation of the title of the Belton Hall Estate, or in the conduct of the business of the company.

(52.) The interim managers may waive any question as to the title of the Belton Hall Estate that may arise, or may accept an indemnity, or otherwise deal with the same as they think fit.

(53.) The interim managers may issue shares receive donations make calls and generally do all such acts and things as may be necessary or expedient for carrying on the business of the company.

(54.) The interim managers may expend any moneys in improving altering or adding to the Belton Hall Estate, and may do any other thing which the managers are hereinafter authorised to do in addition to the things hereby specially authorised to be done by them.

(55.) The interim managers may raise money for the purposes of these articles by mortgage of the whole or any part of the Belton Hall Estate, or

by debentures or promissory notes, issued in the name and on behalf of the company, or by the issue of free or paid-up shares in the company (*a*).

(56.) The receipts of any three of the interim managers shall be effectual discharges for any moneys shares stock or property in such receipts expressed to be paid transferred or delivered to or on account of the interim managers.

(57.) The interim managers shall, in each year of their continuing in office, make a report to the annual general meeting of the shareholders of their expenditure and receipts.

(58.) The interim managers shall not be removed from their office, or controlled in the exercise of their powers by a general meeting of shareholders, or by any individual shareholder, and they shall be amenable only to a court of equity for the due execution of the duties of their office.

(59.) The interim managers may lend the Bolton Hall Estate temporarily for any charitable or public purpose, and may, with the sanction of the trustees, apply any portion of the profits arising from such estate, for any charitable or public purpose.

(60.) Three-fourths of the interim managers may, at a meeting specially convened for that purpose with the consent in writing of six-sevenths of the trustees, rescind alter or add to any article of these articles, and any such rescission alteration or addition so made, shall be binding on the company.

(61.) At the expiration of the period of interim management, the interim managers shall give an account to the managers that succeed them, of all moneys received and expended during the period of interim management, with the particulars of such receipt and expenditure.

Council and Managers.

(62.) On the expiration of the period of interim management, a council and managers shall be chosen, and such council and managers shall be deemed to be the governing body of the company, and in all cases where anything is directed or authorised to be done by the governing body during the existence of the council and the managers, such thing shall be done by the managers, with the sanction of the council previously given; but nothing

(*a*) See 30 & 31 Vict. c. 131, s. 25, and note p. 629.

herein contained shall restrict the powers of the managers as hereinafter given.

(63.) Notwithstanding anything hereinbefore contained, the interim managers shall not vacate their offices until the council and managers to be substituted for them have been chosen.

Council.

(64.) The council shall represent the company, and shall consist of thirty-six members, of whom twelve shall be elected by and represent the A shareholders, twelve shall be elected by and represent the B shareholders and twelve shall be elected by and represent the trustees.

Representatives of A Shareholders.

(65.) The representatives of the A shareholders shall be elected annually, but any retiring representative shall be re-eligible.

(66.) Meetings of the A shareholders shall be held annually for the purpose of electing representatives for the ensuing year.

(67.) The first meeting of the A shareholders, for the purpose of electing representatives, shall be convened by the trustees or by the interim managers. All subsequent meetings shall be held at such time and place as may be determined by council.

(68). Seven days notice at the least, specifying the place and the hour of meeting for an election of representatives for the A shareholders, shall be given by advertisement in some newspaper published in Belton.

(69.) The meeting, on its assembling, shall choose one of their number as chairman.

(70.) The chairman shall regulate the proceedings of the meeting, and in case of an equality of votes shall have a second or casting vote.

(71.) At any such meeting as aforesaid, any persons or person may, with their or his consent, be nominated by any elector, and seconded by any other elector, as representatives or representative of the A shareholders.

(72.) If more candidates are proposed than the number to be elected, a poll may be demanded, and, if demanded, shall be taken in such manner as the chairman may direct; but if not, or if no poll is demanded, a declara-

tion by the chairman that the candidates are elected, shall be conclusive evidence of the fact.

(73.) No person, being a trustee, shall be entitled to vote for a representative of the A shareholders, but, save as aforesaid, every holder of an A share shall have one vote for each representative to be elected, and no more.

(74.) If any holder of an A share is a lunatic or an idiot, he may vote by his committee, or if a minor he may vote by his guardian, or one of his guardians, if more than one.

(75.) No holder of an A share shall be entitled to vote unless all calls due from him have been paid.

(76.) Votes may be given either personally or by proxy. A proxy shall be appointed in writing under the hand of the appointor.

(77.) No person shall be appointed a proxy who is not a holder of an A share, and the instrument appointing him shall be deposited at the registered office of the company, not less than forty-eight hours before the time of holding the meeting at which he proposes to vote.

(78.) Any casual vacancy in the office of a representative member of A shareholders may be filled up by the continuing representatives, but any person so chosen shall retain his office so long only as the vacating representative would have held the same if no vacancy had occurred.

(79.) The A shareholders shall lose one representative member for every two thousand of the A shares that become vested in the trustees in pursuance of the provisions hereinafter contained, and any vacancy that would, if this section had not been inserted, have been filled up by the A shareholders, may be filled up by the trustees or left vacant, as the trustees think expedient.

(80.) If at any meeting at which representatives of the A shareholders ought to be elected, no such election takes place, the representatives of the preceding year shall continue in office for a year longer.

(81.) The constitution of the council shall not be rendered imperfect by reason of the existence of any vacancy or vacanies in the representation of the A shareholders.

Representatives of B Shares.

(82.) The representatives of B shareholders shall be elected annually, but any retiring representative shall be re-eligible.

(83.) Meetings of the B shareholders shall be held annually for the purpose of electing representatives for the ensuing year.

(84.) The first meeting of the B shareholders, for the purpose of electing representatives, shall be convened by the trustees or the interim managers. All subsequent meetings shall be held at such time and place as may be determined by the council.

(85.) Seven days notice at the least, specifying the place and the hour of meeting for an election of representatives of the B shareholders, shall be given by advertisement in some newspaper published in Belton.

(86.) The meeting, at its assembling, shall choose one of their number as chairman.

(87.) The chairman shall regulate the proceedings of the meeting, and in case of an equality of votes shall have a second or casting vote.

(88.) At any such meeting as aforesaid, any persons or person may, with their or his consent, be nominated by any elector, and seconded by any other elector as representatives or representative of the B shareholders.

(89.) If more candidates are proposed than the number to be elected, a poll may be demanded, and if demanded, shall be taken in such manner as the chairman may direct; but if not, or if no poll is demanded, a declaration by the chairman that the candidates are elected shall be conclusive evidence of the fact.

(90.) No person being a trustee shall be entitled to vote in respect of any representative of the B shareholders, but, save as aforesaid, every holder of B shares shall have one vote for every B share up to five inclusive, and he shall have an additional vote for each complete number of five shares beyond the first five.

(91.) If any holder of a B share is a lunatic or an idiot, he may vote by his committee; or if a minor, he may vote by his guardian, or one of his guardians if more than one.

(92.) If two or more persons are jointly entitled to a B share or shares, the person whose name stands first in the register of shareholders as one of

the holders of such share or shares, and no other, shall be entitled to vote in respect of the same.

(93.) No holder of a B share shall be entitled to vote unless all calls due from him have been paid.

(94.) Votes may be given either personally or by proxy. A proxy shall be appointed in writing under the hand of the appointor, or, if such appointor is a corporation, under their common seal.

(95.) No person shall be appointed a proxy who is not a holder of at least one B share, and the instrument appointing him shall be deposited at the registered office of the company not less than forty-eight hours before the time of holding the meeting at which he proposes to vote.

(96.) Any casual vacancy in the representatives of the B shareholders may be filled up by the continuing representatives, but any person so chosen shall retain his office so long only as the vacating representative would have held the same if no vacancy had occurred.

(97.) The B shareholders shall lose one representative member for every two thousand of the B shares that become vested in the trustees in pursuance of the provisions hereinafter contained, and any vacancy that would, if this section had not been inserted, have been filled up by the shareholders may be filled up by the trustees: such vacancy may be filled up or left vacant as the trustees think expedient.

(98.) If at any meeting at which representatives of the B shareholders ought to be elected no such election takes place, the representatives of the preceding year shall continue in office for a year longer.

(99.) The constitution of the council shall not be rendered imperfect by reason of the existence of any vacancy or number of vacancies in the representatives of the B shareholders.

Representatives of the Trustees.

(100.) The representatives of the trustees shall be elected annually. Any trustee may himself be elected as a representative, and any retiring representative shall be re-eligible.

(101.) Meetings for the election of representatives of the trustees shall be held at such time and place as the trustees may determine.

(102.) Notice of meetings for the election of representatives shall be

given, and the proceedings of such meeting shall be regulated in such manner as the trustees may determine.

(103.) Any casual vacancy in the representative members of the trustees may be filled up by the trustees themselves, but any person so chosen shall retain his office so long only as the vacating member would have held the same if no vacancy had occurred.

(104.) Every trustee shall have one vote and no more for each candidate to be elected.

(105.) Votes may be given either personally or by proxy. A proxy shall be appointed in writing under the hand of the appointor.

(106.) No person shall be appointed a proxy who is not a trustee, and the instrument appointing him shall be deposited at the registered office of the company not less than forty-eight hours before the time of holding the meeting at which he proposes to vote.

(107.) If at any meeting at which representatives of the trustees ought to be elected no such election take place, the representatives of the preceding year shall continue in office for a year longer.

(108.) Any additional members to be elected by the trustees in consequence of the purchase of A or B shares shall be subject to the same regulations in all respects as the original members of the trustees.

(109.) The constitution of the council shall not be rendered imperfect by reason of the existence of any vacancy or number of vacancies in the representatives of the trustees.

Powers of Council.

(110.) The council shall represent the company, and shall have power to do the following things :—

To elect the managers ;

To make bye-laws for the regulation of the company and of the managers ;

To give their previous sanction to such acts of the managers as are hereinafter declared to require such sanction ;

To examine into and control all the acts of the managers, but so as not to invalidate retrospectively any act of the managers.

To alter any regulations of these articles by an extraordinary resolution to be passed in manner hereinafter mentioned, subject to this proviso,

that no alteration shall be made affecting the trustees, their constitution or powers, without their consent.

Proceedings of Council.

(111.) Ordinary meetings of the council shall be held once at least in every three months at such place in the borough of Belton as the managers may determine.

(112.) The managers may, whenever they think fit, and they shall, upon a requisition made in writing by any five members of the council, convene an extraordinary meeting of the council.

(113.) Any requisition so made by members of the council, shall express the object of the meeting proposed to be called, and shall be left at the registered office of the company.

(114.) On the receipt of such requisition, the managers shall forthwith proceed to convene an extraordinary meeting of the council; if they do not proceed to convene the same within fourteen days from the date of the requisition, the requisitionists may themselves convene a meeting.

(115.) Seven days notice at the least specifying the place the time the hour of meeting and the purpose for which any meeting is to be held, shall be given in such manner (if any) as may be prescribed by the council, and until some other manner is prescribed, by circular letter, addressed and sent by the secretary to each member of the council.

(116.) No business shall be transacted at any meeting of the council, unless at least ten members are present at the commencement of such business.

(117.) If within one hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of the members, shall be dissolved; in any other case it shall stand adjourned to the following day, at the same time and place, and if at such adjourned meeting a quorum is not present, it shall be adjourned *sine die*, in which case the managers themselves may, at a board duly constituted, transact the business which such meeting of the council could have transacted.

(118.) The chairman of the board of managers shall preside as chairman at every meeting of the company.

(119.) If at any meeting of the council, the chairman of the board of

managers is not present at the time of holding the same, the members present shall choose one of the managers present, and if there is no manager present, then some one of their own number to be chairman of such meeting.

(120.) The chairman may, with the consent of the meeting, adjourn any meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

(121.) Except in the case of matters requiring to be settled by an extraordinary resolution, all questions at meetings of the council shall be decided by a simple majority of votes of the members present, the chairman, in case of an equality of votes, having a second or casting vote.

(122.) Proxies shall not be allowed at meetings of the council.

(123.) A resolution shall be deemed to be an extraordinary resolution of the council whenever the same has been passed by three-fourths in number of such members of the council as may be present in person at any meeting of which notice specifying the intention to propose such resolution has been duly given, and such resolution has been confirmed by a majority of such members as may be present in person at a subsequent meeting, of which notice has been duly given, and held at an interval of not less than ten days, nor more than three weeks from the date of the meeting at which such resolution was first passed.

Managers.

(124.) The trustees shall convene a meeting of the council as soon as possible after their election for the purpose of electing managers.

(125.) The council on its assembling shall choose nine persons to be managers.

(126.) No person shall be chosen as a manager unless he is a trustee or a shareholder of the company.

(127.) No other business shall be transacted at the first meeting of the council except the election of the managers.

(128.) The managers shall, as soon as possible after their election, if they cannot agree among themselves, be divided by lot into three classes. The first class shall retire from office at the expiration of one year from the date of their election; the second class at the expiration of two years from the

date of their election; and the third class at the expiration of three years from the date of their election.

(129.) The places of the retiring managers shall be filled up by the council.

(130.) Any retiring manager shall be re-eligible.

(131.) Any casual vacancy occurring in the managers may be filled up by the managers themselves; but any member so chosen shall retain his office so long only as the retiring manager would have retained the same if no vacancy had occurred.

(132.) If the council makes default at any time in filling up any vacancies in the body of managers hereby required to be filled up, such vacancies shall be deemed to be casual vacancies, and be dealt with accordingly.

(133.) The remuneration, if any, of the managers shall be fixed by the council.

(134.) The continuing managers may act during any vacancy in their body.

Disqualification of Managers.

(135.) The office of any manager shall be vacated

If he holds any other office or place of profit under the company;

If he becomes bankrupt or insolvent;

If he is concerned in or participates in the profit of any contract with the company;

If he participates in the profits of any work done for the company.

But the above rules shall be subject to the following exceptions:—

That no manager shall vacate his office by reason of his being a shareholder in any incorporated company which has entered into contracts with or done any work for the company of which he is a manager: nevertheless he shall not vote in respect of such contract or work; and if he does vote, his vote shall not be counted.

Duties of Managers.

(136.) The ordinary duties of the managers will be—

To keep the Belton Hall estate in good repair;

To make regulations for the admission of persons to the estate;

To provide lectures or concerts;

To make arrangements for fêtes;

And generally to do all things that may conduce to further the objects of the company.

(137.) The managers may at any time let any portion of the hall or grounds for short periods for the purpose of any exhibition lecture concert or other profitable or amusing entertainment, and may determine whether or not free admission will be available during the periods of such letting.

(138.) The managers may lend the Belton Hall estate temporarily for any charitable or public purpose, and may with the sanction of the council apply any portion of the profits arising from such estate for any charitable or public purpose.

(139.) The managers may apply any portion of the funds of the company to the beautifying or improving the property of the company, providing museums gardens pictures statues libraries maps and any other things conducive to the objects of the company, as stated in the memorandum of association.

(140.) The managers may permit exciseable or other liquors to be sold within the precincts of the estate, on such terms and subject to such regulations, as they think fit.

(141.) The extraordinary duties of the managers will be, when directed by the council—

To raise money by mortgage, or by increasing the capital of the company;

To let portions of the estate on building or on other leases;

To sell portions of the estate that are not required for the purposes of the company;

To buy other portions of land;

To let the park for grazing or other purposes;

To repair the hall; and

To make alterations or additions in the estate garden or park.

(142.) The managers shall, in the exercise of their powers, be subject to the control of and be responsible to the council, and shall submit to the council full reports of all the transactions of the company, including detailed accounts of receipts and expenditure, and shall obtain the directions of the council as to the general course of management to be pursued by them. They shall, when required by the council, give explanations as to

their course of management, and any information as to any other matter relating to the company in respect of which they may be able to inform the council.

(143.) The above enumeration of the duties of the managers is not intended to exhaust their powers. They may, subject to the control of the council, exercise all the powers of the company, except the powers hereinbefore given to the council, the powers and privileges given to the trustees, and the powers in respect of dissolution hereinafter vested in a general meeting of the company.

Proceedings of Managers.

(144.) The managers may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit. The quorum necessary for the transaction of business shall be three. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes, the chairman shall have a second or casting vote. A manager, or the secretary of the company, may at any time summon a meeting of the managers.

(145.) The managers shall at their first meeting after the annual election of managers, elect a chairman of their meetings for the ensuing year, but if the office of chairman is vacant at the time of any meeting, or if the chairman is not present at the time appointed for holding any meeting, the managers present shall choose some one of their number to be chairman of such meeting.

(146.) All acts done by any meeting of the managers, or by any person acting as a manager, shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such managers, or person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed, and was qualified to be manager.

(147.) The managers shall cause minutes to be made in books provided for the purpose:—

(1.) Of the names of the managers present at each meeting;

(2.) Of all orders made by the managers;

(3.) Of all resolutions and proceedings of meetings of the council.

Any such minute as aforesaid, if signed by the chairman, or any person

purporting to be the chairman of the meeting of managers, or of the council, as the case may be, to which such minute relates, shall be receivable in evidence without any further proof.

Officers.

(148.) The company shall have a banker, and solicitor or solicitors; they shall also have a secretary and such other officers as the governing body of the company may think necessary. The following persons are appointed as officers: William Henry, of Belton, the first solicitor, Messieurs Jones, of Belton, the first bankers, and Daniel Joseph, of Belton, the first secretary.

(149.) The bankers and solicitors of the company may be removed by the governing body of the company.

(150.) Any vacancy in the office of banker or solicitor shall be filled up by the governing bodies of the company.

(151.) The secretary, and all other paid officers and servants of the company, shall be chosen annually by the governing body of the company.

Dividends.

(152.) The managers may, with the previous sanction of the council, declare a half-yearly dividend out of the profits of the company.

(153.) Every holder of a B share, whether a trustee or not, and no other person, shall be entitled to receive by way of dividend a share of the profits of the company, bearing the same ratio to the whole profits of the company that his share bears to the whole nominal capital for the time being of the company.

(154.) All dividends payable in respect of unallotted shares shall be paid to the trustees, and carried to the account of the reserved fund.

(155.) The managers may, before recommending any dividend, set aside out of the profits of the company such sum as they think proper for the purpose of meeting contingencies repairing maintaining or keeping in order the hall and grounds connected with the business of the company or any part thereof, and they may invest the sum so set apart as a contingent fund on such securities as they may select.

(156.) The managers may deduct from the dividends payable to any

shareholder all such sums of money as may be due from him to the company on account of calls or otherwise.

(157.) Notice of any dividend that may have been declared shall be given to each shareholder entitled to receive the same in manner hereinafter mentioned, and all dividends unclaimed for three years after having been declared may be forfeited by the managers for the benefit of the company.

(158.) No dividend shall bear interest as against the company.

Accounts.

(159.) The managers shall cause true accounts to be kept—

Of the land property and effects of the company;

Of the sums of money received and expended by the company, and the matter in respect of which such receipt and expenditure takes place; and

Of the credits and liabilities of the company.

Such accounts shall be kept in proper books, prepared in such form suited for the purpose as the council may from time to time determine. The books of accounts shall be kept at the principal office of the company, and, subject to any reasonable restrictions as to the time and manner of inspecting the same that may be imposed by the council, shall be open to the inspection of any shareholder during the hours of business.

(160.) The managers shall lay before the council at their ordinary meetings such statement of accounts as the council may require. They shall also lay before the shareholders at their ordinary general meeting in each year, a statement of the income and expenditure made up to the date of such meeting, or as near thereto as circumstances will permit, including, in the first statement made by them, an account of the income and expenditure of the interim managers.

(161.) The statement so made shall show, arranged under the most convenient heads, the amount of gross income, distinguishing the several sources from which it has been derived, and the amount of gross expenditure, distinguishing the expense of the establishment salaries and other like matters. Every item of expenditure fairly chargeable against the year's income shall be brought into account, so that a just balance of profit and loss may appear; and in cases where any item of expenditure which may in fairness be distributed over several years has been incurred in any one year, the whole

amount of such item shall be stated, with the addition of the reasons why only a portion of such expenditure is charged against the income of the year.

(162.) A balance sheet shall be made out in every year, and laid before the general meeting of the company, and such balance sheet shall contain a summary of the property and liabilities of the company, arranged under convenient heads.

(163.) A copy of the balance sheet shall, for seven days previously to such meeting, lie at the office of the company open to the inspection of any shareholder.

Audit.

(164.) The accounts of the company shall be examined, and the correctness of the balance sheet ascertained, once at least in every year, after the expiration of the period of interim management, by one or more auditor or auditors to be elected by the council.

(165.) If not more than one auditor is appointed, all the provisions herein contained relating to auditors shall apply to him.

(166.) The auditors need not be shareholders in the company. No person is eligible as an auditor who is interested otherwise than as a shareholder in any transaction of the company, and no manager or other officer of the company shall be eligible during his continuance in office.

(167.) The remuneration of the auditors shall be fixed by the council at the time of their election.

(168.) Any auditor shall be re-eligible on his quitting office.

(169.) If any casual vacancy occurs in the office of auditor, the council shall forthwith fill up the same.

(170.) Every auditor shall be supplied by the managers with a copy of the balance sheet, and it shall be his duty to examine the same with the accounts and vouchers relating thereto.

(171.) Every auditor shall have a list delivered to him by the managers of all books kept by the company, and he shall at all reasonable times have access to the books papers and accounts of the company; he may at the expense of the company employ accountants or other persons to assist him in investigating such accounts; and he may in relation to such accounts examine the managers or any other officer of the company.

(172.) The auditors shall make a report to the shareholders at their general meeting upon the balance sheet and accounts, and in every such report they shall state whether in their opinion the balance sheet is a full and fair balance sheet, containing the particulars required by these regulations, and properly drawn up so as to exhibit a true and correct view of the state of the company's affairs, and in case they have called for explanations or information from the managers, whether such explanations or information have been given by the managers, and whether they have been satisfactory, and such report shall be read together with the report of the managers at the general meeting of the company.

(173.) The auditor shall examine into the charges made by the solicitors of the company in respect of any business performed by them on behalf of the company, and may modify or disallow any charge they may think improper.

General Meetings of the Company.

(174.) An ordinary general meeting of the whole company shall be held in the month of March in every year, at such time and place as the governing body of the company appoint.

(175.) The governing body of the company shall lay before such ordinary meeting the accounts of the company, and shall make to them a statement of the affairs of the company, but no shareholder shall be entitled to vote at such meeting, nor shall any resolution passed thereat be of any effect as respects the company or its property.

(176.) Extraordinary general meetings of the company may be held at such time and manner as are hereinafter mentioned.

Trustees.

(177.) A sufficient number of B shares to represent the donations made to the company shall be set aside and vested in the trustees hereinafter named, for the purpose of forming a reserved fund to be appropriated to the purchase of the other shares in the company, with a view, after compensating the shareholders for the value of their shares, to dedicate the Belton Hall estate to the use of the public, in manner and to the extent expressed in the memorandum of association.

(178.) The first trustees shall be the following persons, namely, John

Jones, Richard Tucker, Francis Smith, William Thomas, James Timmins, William Brown, and Charles Green.

(179.) The office of trustee shall be vacated—

(1.) If he holds any place of profit under the company;

(2.) If he becomes bankrupt or insolvent;

(3.) If he becomes a lunatic, or otherwise incapable of performing his duties.

(180.) A trustee may resign by giving a ten days notice in writing under his hand to the secretary of the company.

(181.) Any vacancy in the office of trustee occasioned by the death, resignation, disqualification, or incapacity of any trustee, shall be filled up by the trustees.

182.) The trustees may increase their number.

(183.) The trustees may act during any vacancy in their body as if such vacancy had not occurred.

Proceedings of Trustees.

(184.) The trustees may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit, and determine the quorum necessary for the transaction of business. Questions arising at any meeting shall be determined by a majority of votes of the trustees present. In case of an equality of votes, the chairman shall have a second or casting vote. Any trustee may at any time summon a meeting of the trustees.

(185.) The trustees may elect a chairman of their meeting, and determine the period for which he is to hold office; but if no such chairman is elected, or if at any meeting the chairman is not present at the time of holding the same, the trustees present shall choose some one of their number to be chairman of such meeting.

Duties of Trustees.

(186.) The trustees shall stand possessed of the shares for the time being constituting the reserved fund, and of all interest and dividends accruing thereon, upon trust to apply the same in such manner as they think expe-

dient, with a view of carrying into effect the public objects of the company stated in the memorandum of association.

(187.) The trustees shall from time to time, when occasion allows, purchase the shares belonging to Class B, not forming part of the reserved fund (which shares are hereinafter called outstanding B shares), and hold the same as part of the reserved fund.

(188.) If at any time the trustees have funds available for the purchase of outstanding B shares, but are unable to find shareholders willing to part with their shares, the trustees shall thereupon call a meeting of all the holders of B shares, and shall declare to such meeting the number of shares they propose to purchase, and thereupon the shares to be sold to the trustees shall be determined by ballot, in such manner and at such time and place as may be fixed by the trustees.

(189.) The price to be paid for any B share shall, if no agreement be come to between the holder thereof and the trustees, be settled by arbitration.

(190.) If any holder of a B share whose share is determined by the ballot to be saleable to the trustees, refuses to part with the same, the trustees shall nevertheless become entitled to all dividends that may thenceforth accrue due in respect of such share.

(191.) The trustees may, when all the B shares have become vested in them, apply any portion of the reserved fund in purchasing any number of A shares upon such terms and subject to such conditions as they think fit; it being the intention of these presents, that in the event of the reserved fund being sufficient, the holders for the time being of the A shares shall be recouped, either wholly or partially, the moneys they have paid in respect of their shares.

(192.) If at any time the parties desirous of selling A shares upon the terms offered by the trustees are more that the funds of the trustees can satisfy, the trustees shall determine by ballot the parties whose shares are to be purchased by the trustees.

(193.) It shall not be compulsory on the trustees in any case to purchase A shares, but they may exercise an uncontrolled discretion as to such purchase, subject to the regulation herein contained.

(194.) The trustees may appoint a secretary and such other officers as they think necessary for the purpose of conducting their business, and may award them a reasonable remuneration for their services.

(195.) The trustees may register the shares held by them in the company, in the names of such persons, not being less than three of their number, as they think fit.

(196.) The trustees may pay all expenses incurred by them in the performance of their trust, out of any moneys for the time being in their hands, and may invest the residue of such moneys in such government or real securities, and in such names, as they think fit, and may accumulate the dividends arising therefrom, with power to vary any securities for the time being held by them into or for others of a like nature.

(197.) The trustees may at any time, in the event of the funds of the company being in their opinion insufficient for the purposes hereinafter mentioned, apply any portion of the reserved fund in maintaining repairing or enlarging the Belton Hall estate, or in furtherance of any of the objects of the company, instead of in purchasing shares, or may lend the same to the company to be applied in furtherance of any of the objects of the company.

(198.) The trustees may mortgage the reserved fund, and apply the moneys raised by such mortgage in any manner in which the reserved fund itself would be applicable.

(199.) The receipts of the trustees, or any three of them, shall be effectual discharges for any moneys shares stock or property in such receipts expressed to be paid transferred or delivered to or on account of the trustees.

(200.) The trustees may receive contributions towards the reserved fund, or towards the maintenance or improvement of the Belton Hall estate, and may accept such contributions subject to any conditions not inconsistent with the public objects of the company that may be agreed on between the contributors and the trustees.

(201.) In the event of the trustees having acquired the whole of the A and B shares, all the provisions hereinbefore contained with respect to the constitution of the council and the managers shall cease, and the trustees shall themselves form the company, and be invested with all the powers hereinbefore conferred on the council and managers together, or on either of such bodies separately. They shall administer the funds of the company in such manner as they think most expedient, with a view of carrying into effect the public objects of the company.

(202.) In the event of the trustees having acquired the whole of the A

and B shares, they may transfer the Belton Hall estate to the mayor, aldermen, and burgesses of the borough of Belton, to be held by them as a public park, or they may transfer the same to any other public body, on such body undertaking to carry into effect the public objects of the company.

(203.) The trustees may at any time, with the sanction of the council and they may in their own discretion, as soon as they have acquired the whole of the A and B shares, apply for a charter or act of Parliament, for the purpose of enabling themselves or the said mayor aldermen and burgesses or any other body of persons, to carry into effect the public objects of the company.

(204.) The trustees shall not be subject to the control of the company, or of the governing body of the company, or of any shareholder therein, in respect of their application of the reserved fund, but they shall give an account of the manner in which they have dealt with such fund to the ordinary general meeting of the company in each year.

Notices.

(205.) Notice of any meeting call or other thing shall, in cases where the manner of giving such notice is not hereinbefore set forth, be deemed to have been served on any shareholder whose registered place of residence is situate in or within five miles of the town hall of Belton, at the time when such notice is first published in some newspaper published in Belton; nevertheless such notice may be served in manner next hereinafter mentioned.

(206.) Notice of any meeting or thing in cases where the manner of giving such notice is not hereinbefore set forth, may be served on any shareholder whose registered place of residence is situate at a distance of more than five miles from the town hall of Belton, either personally or by leaving the same or sending it through the post as or in a letter addressed to such shareholder, at his registered place of abode.

(207.) Notices by letter shall be posted in such time as to admit of the letter being delivered in the due course of delivery within the period, if any, prescribed for the giving of such notice, and on proving such service it shall be sufficient to prove that such notice was properly directed, and that it was put into the post office at such time as aforesaid.

(208.) In cases where any share is held by several persons, a notice to the person named first on the register of shareholders shall be notice to all the proprietors of each share.

Arbitration.

(209.) If any difference, the manner of deciding which is not hereinbefore prescribed, or which is directed to be settled by arbitration without further directions, arises between any shareholder trustee or other person or bodies of persons to whom the regulations of these presents apply, such difference shall, unless the parties agree to refer the same to a single arbitrator, be settled by three arbitrators, of whom one shall be chosen by each of the parties to the difference, and the third by the two arbitrators first chosen.

(210.) The decision of any two of the arbitrators shall be conclusive.

(211.) If either party to the difference makes default in appointing an arbitrator for ten days after the other party has given to him notice to appoint the same, such other party may appoint an arbitrator to act in the place of the arbitrator of the defaulting party.

Dissolution.

(212.) Extraordinary general meetings of the shareholders of the company may be held for the purpose of determining on the dissolution and winding up of the company, but for no other purpose.

(213.) The interim managers may, if they think fit so to do, summon an extraordinary general meeting, but the power hereby given them shall not derogate from the powers of dealing with the property of the company hereinbefore given them, without summoning such meeting.

(214.) The managers may, whenever they think fit, and they shall, if required so to do by the trustees, summon an extraordinary general meeting.

(215.) Every shareholder shall be entitled to vote, either personally or by proxy, at an extraordinary general meeting, in manner following, that is to say :—

> Every holder of an A share shall have one vote, and every holder of a B share shall have the same number of votes as he would have under the provisions hereinbefore contained for the election of the representative members.

(216.) The registered holders of the shares forming part of the reserved fund may, notwithstanding that they are known to be trustees, vote as ordinary shareholders.

(217.) The company shall be dissolved by a resolution of a majority of shareholders present, personally or by proxy, at an extraordinary general meeting, if such resolution is recommended by the trustees, but otherwise it may be dissolved by a special resolution of an extraordinary general meeting, passed in manner provided by the Companies Act, 1862.

(218.) The meeting at which the company is declared to be dissolved, or any subsequent extraordinary general meeting, may decide by a resolution of the majority of the shareholders present, personally or by proxy, whether the company is to be wound up voluntarily or by the court.

[Names and addresses of subscribers.]

FORM A.

Certificate of Class A Shares.

THE BELTON HALL AND PARK COMPANY, LIMITED.

Class A, Share No.

I hereby certify that of is the holder of the above-mentioned share in the company.

NOTE.—*This share may be transferred by filling up the indorsed form. The transfer must be signed by the transferee as well as the transferor. It must then be presented to the registering officer of the company, who will register the name of the transferee, and give him a fresh certificate.*

FORM B.

Certificate of Class B Shares.

THE BELTON HALL AND PARK COMPANY, LIMITED.

Class B Shares, No. to .

I hereby certify that of in the county of , is the holder of class B shares numbered to in the above-mentioned company.

NOTE.—*These shares, or any of them, may be transferred by filling up the indorsed form.*

The transfer must be signed both by the transferee as well as the transferor.

It must then be presented to the registering officer of the company, who will register the name of the transferee, and grant him a fresh certificate.

If all the shares mentioned in the certificate are not transferred, the transferor must also appear before the registering officer, and receive a fresh certificate, specifying the shares retained by him.

Form of Transfer of Shares to be indorsed on the preceding Certificates.

I, of (*a*) (in consideration of the sum of , paid to me by of) do hereby transfer to the (*A or B*) share (*or shares*), numbered in the Belton Hall and Park Company, Limited, standing in my name in the books of the company To hold unto the said , his executors administrators and assigns, subject to the several conditions on which I held the same at the time of the execution hereof. And I, the said , do hereby agree to take the said share (or shares), subject to the same conditions.

As witness our hands the day of one thousand eight hundred and

Witness

No. 25.

MEMORANDUM AND ARTICLES OF ASSOCIATION OF A COMPANY, LIMITED BY GUARANTEE, AND NOT HAVING A CAPITAL DIVIDED INTO SHARES (*b*).

Memorandum of Association.

(1.) The name of the company is "The Framley Institute Association, Limited."

(*a*) These words will be omitted if no consideration is paid.
(*b*) See note at end of form.

(2.) The registered office of the company will be situate in England.

(3.) The objects for which the company is established are, the establishment at Framley of libraries museums reading-rooms news-rooms lectures and other means of instruction and entertainment for the inhabitants of Framley, and the doing all such other things as are incidental or conducive to the attainment of the above objects.

(4.) Every member of the company undertakes to contribute to the assets of the company in the event of the same being wound up during the time that he is a member, or within one year afterwards, for payment of the debts and liabilities of the company, and the costs, charges, and expenses of winding up the same, and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required not exceeding one pound.

WE, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association.

[Names and addresses and descriptions of subscribers.]

Articles of Association to accompany preceding Memorandum of Association.

Number of Members.

(1.) The company, for the purpose of registration, is declared to consist of five hundred members.

(2.) The council hereinafter mentioned may, whenever the business of the association requires it, register an increase of members.

Nature of Institute.

(3.) The institute is established for the diffusion and advancement of science, literature, and art.

(4.) The institute shall be divided into two departments, to be called respectively the general department, and the industrial department.

(5.) The general department shall comprise—

First, reading-rooms and news-rooms supplied with books newspapers and other suitable things for the use of the members;

Second, libraries museums a gallery of the fine arts, collections of mining records, and other collections for scientific purposes;

Third, lectures and meetings for discussion on the higher branches of knowledge.

The industrial department shall comprise—

First, classes for elementary and progressive instruction in mathematics and practical science, and such other subjects as may seem fit to the council of the institute, for carrying out the object of the institute;

Second, laboratories, models, philosophical apparatus, and all other things necessary for carrying into effect the objects of the industrial department.

Members.

(6.) All annual subscribers of not less than one guinea to the general fund of the institute shall be members of the institute; but such minimum subscription may be increased by a resolution of a general meeting of the institute.

(7.) The annual subscription of each member shall become due on one of the following days (that is to say), either on the first day of June or the first day of December in every year, according to the time at which he was admitted, each member being liable to pay a subscription for the current year commencing on such one of the above-mentioned days as last occurs previously to his admission.

All subscriptions shall be paid in advance.

(8.) Any member who does not give notice to the secretary three months previously to the day on which his next subscription becomes due of his intention to withdraw from the institute, shall be considered as a continuing member, and shall pay his subscription accordingly.

(9.) Every member who has paid his subscription for the current year shall be entitled to vote at any general meeting, and may (subject to any byelaws and regulations that may be established) attend all lectures and meetings in the general department, and have access to the libraries, reading-rooms, news-rooms, museums, galleries, and other public rooms of the institute in the general department, but shall not be entitled to attend the

classes in the industrial department except on such terms as the council of the institute may prescribe.

(10.) Subject to any alteration or regulation to be made by the council of the institute, annual students in any class in the industrial department shall, if above sixteen years of age, enjoy all the advantages of the general de-department if their class fees amount to at least one guinea, but if not, then on payment in advance of five shillings per annum, or of such less sum as shall with their class fees amount to one guinea.

(11.) There shall be certain honorary officers of the institute (that is to say), a president, two vice-presidents, a treasurer, secretary, and two auditors, who shall perform such duties as are herein expressed, or as may be imposed upon them by the council of the institute, but no one of such officers shall receive any remuneration for his services.

(12.) The affairs of the institute shall be managed by a committee or council of twenty-five governors, comprising the following persons :—

First, the official governors (that is to say),

The president, two vice-presidents, and treasurer for the time being of the institute.

Second, thirteen elected governors, to be chosen in manner hereinafter mentioned, consisting of—

Eleven members of the institute, and two students in the industrial department, being of the age of twenty-one years or upwards ; but if at any time there are not two such students, the deficiency or deficiencies shall be supplied from among the members of the institute.

Third, the borough governors (that is to say),

The mayor of Framley for the time being, and four members of the council of the borough, to be chosen by such council in the manner hereinafter mentioned.

(13.) The following officers (that is to say), the president, two vice-presidents, treasurer, and thirteen elected governors, shall be chosen by the members of the institute at their annual general meeting, out of members of the institute.

(14.) If any student holding the office of elective governor ceases to be a student, he shall vacate his office.

(15.) , shall be the first president ; , shall be the two first vice-presidents ; , shall be the first treasurer :

and

shall be the first thirteen elective governors, and shall respectively hold their offices until the day hereinafter appointed for the holding of the first annual general meeting of the institute.

(16.) The four borough governors shall be elected by the council of the borough from their own body; and the town clerk shall notify in writing such election to the honorary secretary of the institute on or before the day in each year appointed for the holding of the annual general meeting of the institute.

(17.) If the council of the borough neglect to make such election as aforesaid, the power of filling up all vacancies so occurring shall be vested in the official and elective governors, who may exercise the same or not at their discretion; and if exercised, the vacancy shall be supplied from among the members of the institute; provided that such power shall not be exercised by the official and elective governors unless they have first given notice to the council of the borough of their intention to fill up the vacancy, and the council of the borough has for a period of forty days after the receipt of such notice neglected to fill up the same.

(18.) The councillors of the said borough shall be the first four borough governors, and shall hold their offices until the day hereinafter appointed for the holding of the first annual general meeting of the institute.

(19.) Whenever a casual vacancy occurs in the office of president, vice-president or treasurer or of any elective governor, it shall be filled up by the council of the institute, and whenever a casual vacancy occurs in the office of borough governor it shall be filled up by the council of the borough electing out of their own body a person to supply that vacancy, or, in default of their filling up the same within forty days from the occurrence thereof, by the council of the institute, but in any of the above cases the person chosen to fill any vacancy shall be qualified under the foregoing sections previously to being elected to such office, and shall hold the same for such period only as the governor in whose stead he is chosen would have held the office if the same had not been vacated.

(20.) It shall be lawful for the council of the institute to do the following things:—

First, to apply any moneys in their hands or under their control, in purchasing taking on lease or otherwise acquiring any lands or buildings suitable to the objects of the institute, or in erecting any suitable buildings on any land that may be acquired by them, or in enlarging or otherwise adapting to the purposes of the institute any buildings;

Second, to appoint an honorary secretary from their own body;

Third, to appoint and remove all teachers lecturers paid officers and servants, and to fix the amount of their remuneration;

Fourth, to decide on the propriety of communicating to the society any papers which may be sent to be read at discussional meetings, and to direct the publication of any paper so read, and of other transactions;

Fifth, to regulate the general department, and superintend the formation of all such libraries museums galleries of art and collections as they may think expedient, with power to accept or reject conditionally or otherwise the offer of any donation to the libraries museums galleries of art or collections;

Sixth, to provide a lecture theatre, and to grant the temporary use of such theatre to any person or body of persons, and upon such terms as they may think expedient;

Seventh, to admit the public to the museums galleries and collections of the institute on certain days gratuitously, and on such other days and on such terms as the council of the institute may determine, and to the lectures and scientific meetings of the general department, on such terms as they may determine;

Eighth, to appropriate for the accommodation of the Framley society of arts and government school of ornamental art, without charge, such portion of the buildings of the institute as the council of the institute may think fit;

Ninth, to regulate the industrial department, with power to determine the conditions of admission, the subjects to be taught, the hours of teaching, and the sums to be paid by the pupils;

Tenth, to apply the income of the institute in such manner as they may think most conducive to the objects of its establishment;

Eleventh, to make regulations and bye-laws for the government of the institute, for the manner of electing its officers, for the orderly

conduct of its officers members teachers pupils and servants, and for the determination of their several duties; and respecting the grounds of expulsion of such members, and the mode of such expulsion;

Twelfth, to alter from time to time any bye-laws or regulations, and to annex reasonable penalties for the breach of any bye-law or regulation; but no bye-law shall be made or altered except at a meeting of the council of the institute specially summoned for that purpose;

Thirteenth, to sell and exchange any portion of the moveable property of the institute, and to apply the moneys produced by any sale in the acquisition of any other moveable property available in furtherance of any of the objects of the institute;

Fourteenth, to hire any premises for the temporary occupation of the institute until the buildings about to be erected are completed;

Fifteenth, to invite any persons not permanently resident in Framley, and who are distinguished in science literature or the arts (whether natives or foreigners), to be honorary members of the institute, without payment of any subscription;

Sixteenth, to exercise all powers of the institute except in relation to such matters as are hereby directed to be done at a general meeting.

(21.) The council of the institute may hold meetings at such times and places as they may appoint, but they must hold a meeting at least once in the course of every month; they may adjourn any meeting as they may think proper, and at any time any two governors may require a special meeting of the council of the institute to be called, upon giving such notice as may be prescribed by any bye-law.

(22.) Business shall not be transacted at any meeting of the council of the institute, unless there are present at the commencement and close of the business at least five governors.

(23.) The president, and in his absence the following officers in succession, each in the absence of the other, in the order in which they are named (that is to say), the senior or junior vice-president, or the treasurer, shall be entitled to take the chair at any meeting of the council of the institute; in the absence of all the before-named officers, the governors present shall choose some one of their number to be chairman of the meeting.

(24.) All questions shall be decided by a majority of the votes of the

governors present, and in case of an equal division of votes the chairman shall have a second or casting vote.

(25.) At the meetings of the council of the institute, minutes of each governor's attendance shall be entered in a book and signed by the chairman.

(26.) The council of the institute shall cause minutes of all orders made and proceedings taken by them to be duly entered in books to be from time to time provided for the purpose and kept under their superintendence, and every such entry shall be signed by the chairman of the meeting in which such order was made or proceeding taken.

(27.) The council of the institute may appoint one or more committees, consisting of such number of governors as they think fit, and grant to such committees respectively power on behalf of the institute to do any acts relating to the affairs of the institute which such council could lawfully do.

(28.) A committee so appointed may meet from time to time and adjourn as they think proper for carrying into effect the purposes of their appointment, but no committee shall exercise the powers intrusted to them except at a meeting at which there shall be present such quorum as may be fixed for that purpose by the council of the institute, and at every committee meeting one of the members present shall be appointed chairman, and all questions shall be determined by a majority of votes of the members present, and in case of an equal division of votes the chairman shall have a second or casting vote.

(29.) The custody of the common seal of the institute, and the power to use the same on behalf of the institute, shall be vested in such person or persons as the council of the institute may from time to time appoint.

(30.) Two members of the institute, not being members of the council of the institute, shall be chosen by the members at their annual general meeting in each year as auditors of accounts for the ensuing year.

(31.) It shall be the duty of the auditors to receive from the council of the institute the periodical accounts and balance sheet hereinafter required to be presented to the members, and to examine the same, and to report thereon to the annual general meeting.

(32.) George Smith, of Framley, merchant, and Robert Jones, the younger, of Framley, clerk, shall be the first auditors of the institute.

(33.) The first annual general meeting of the members of the institute shall be held on the second Monday in January, 18 , and the future annual

general meetings on the second Monday in January in every succeeding year, and all general meetings shall be held at such place as may be appointed by the said council.

(34.) Fourteen days public notice at the least of the annual general meeting in each year shall be given by advertisement in the Framley newspapers, or such of them as the council of the institute may select, and shall be posted up in the reading-rooms of the institute: such notice shall specify the place day and hour of the meeting, and also (if any business other than the matters hereby directed to be done by the annual general meeting be intended to be transacted) the nature of such business.

(35.) No matters, except such as are hereby directed to be done at the annual general meeting, shall be transacted at any such meeting, unless notice of such matter has been given in the advertisement announcing such meeting.

(36.) Every general meeting of the members of the institute, other than the annual general meeting, shall be called a special meeting, and such meetings may be convened by the council of the institute.

(37.) No special meeting shall enter upon any business not set forth in the notice by which it was convened.

(38.) Fifty members of the institute may by writing under their hands at any time require the council of the institute to call a special meeting of the institute; such requisition shall fully express the object of the meeting required to be called, and shall be given to the secretary of the institute, and on the receipt of such requisition the said council shall call a meeting accordingly. If for one calendar month after the receipt of such requisition the council of the institute fail to call such meeting, the said fifty members may themselves call the same by giving fourteen days public notice thereof.

(39.) Fourteen days public notice at the least of any special meetings shall be given by advertisement in the Framley newspapers, or such of them as the council of the institute may select, and posted up in the reading-rooms of the institute: such notice shall specify the place day and hour of the meeting, and the purpose for which the meeting is called.

(40.) At every meeting of the institute, whether it be the annual general meeting or a special meeting, the president, and in his absence the senior vice-president, and in his absence the junior vice-president, shall be entitled to take the chair: in the absence of the above officers, the members present shall choose one of their number to be chairman of such meeting.

(41.) The votes at general meetings, except on the election of officers to be provided for by bye law, shall in the first place be taken by show of hands, and the chairman shall declare the result; any member demurring to his decision may demand a poll, which shall be immediately taken, and the chairman shall declare the result; every proposition at any such meeting shall be determined by a majority of the votes of the members present, the chairman of the meeting being entitled to vote as an individual member, and also to have a casting vote if there be an equality of votes.

(42.) Matters directed to be done at the annual general meeting are as follows:—

First, the reception of the report of the proceedings of the institute during the preceding year, and the passing of the accounts;

Second, the election of a president, two vice-presidents, a treasurer, thirteen elected governors, and two auditors for the ensuing year;

Third, any business of which notice has been duly given.

(43.) The council of the institute shall cause full and true accounts to be kept of all sums of money received or expended by them, or by any persons employed by or under them, and of the matters for which sums of money have been received or expended.

(44.) The accounts shall be closed in each year on the thirtieth of November, or on such other day as the council of the institute may determine, and shall be balanced and audited fourteen days at the least before the annual general meeting in each year, and forthwith on the accounts being so balanced and audited an exact balance sheet shall be made up, exhibiting a true statement of the financial condition of the institute, and such balance sheet shall be open to the inspection of the members for fourteen days previous to such meeting and for one month thereafter, in one of the principal rooms of the institute, and an abstract of such balance sheet shall be published in the Framley newspapers, or such of them as the council of the institute may select.

[Names, addresses, and descriptions of subscribers].

NOTE.—This is an Association for establishing museums, libraries, and other means of education in a large town. In form it is a company limited by guarantee, not having a capital divided into shares.

No. 26.

FORM OF ARTICLES AUTHORIZING ISSUE OF SHARE WARRANTS TO BEARER (*a*).

Subject to the provisions of the Companies Act, 1867, the company may with respect to any share which is fully paid-up, issue under their common seal a warrant stating that the bearer of the warrant is entitled to the share or shares therein specified, and may provide by coupons or otherwise for the payment of the future dividends on the share or shares included in such warrant (in these articles called a share warrant).

The bearer of a share warrant shall be entitled on surrendering such warrant for cancellation, to have his name entered as a member in the register of members, and the company shall be responsible for any loss incurred by any person by reason of the company entering in its register of members the name of any bearer of a share warrant in respect of the shares or stock specified therein without the share warrant being surrendered and cancelled.

The bearer of a share warrant shall be deemed to be a member of the company within the meaning of the Companies Act, 1862, except that he shall not be qualified in respect of the shares included in the warrant for becoming a director.

The bearer of a share warrant shall not be entitled to vote either personally or by proxy at any meeting unless he deposits the warrant for the shares in respect whereof he proposes to vote at the registered office of the company not less than forty-eight hours before the time fixed for the meeting.

No. 27.

ABRIDGED FORM OF TRUST DEED FOR SECURING DEBENTURES WITH FORM OF DEBENTURE AND COUPON IN SCHEDULE (*b*).

THIS INDENTURE made the day of 18 between the Railways Company (hereinafter called "the company") of the one part, and A. B. of , and

(*a*) See ss. 27—36 of the Companies Act, 1867, pp. 491—495. These articles may be adopted in any of the preceding forms which apply to a company limited by shares.

(*b*) This form supposes a concession to have been granted by a South American Republic to an English company for the construction of railways by the company in the dominions of the Republic. It can readily be adapted to charge any undertaking either by way of assignment or by way of demise.

C. D. of , trustees, of the other part. *Whereas* a railway from M to N was established by virtue of a decree or concession made by the Supreme Government of X , and dated the 1st day of December, 18 , whereby among other things the exclusive privilege was granted to the company for the term of twenty-five years of conveying passengers, goods, and other cargo by railway between M and N , such term of twenty-five years to commence from the completion by the company of the railway so established, and it was by the same decree or concession provided that the proprietorship of the said railway should be and continue vested in the company for the term of ninty-nine years after the completion thereof, and that on the expiration of the said term the said railway with its stock and appurtenants should become the property of the said Supreme Government, and in the same decree or concession are contained sundry privileges and conditions with respect to the said railway. *And whereas* the said railway was completed and opened for traffic with a single line of rails on the 1st day of May, 18 , from which date the said terms of twenty-five years and ninty-nine years are to be computed. *And whereas* the company are now the owners of the said railway, and are engaged in working the same, and are owners of the plant and fixed and rolling stock used in connection therewith, and of all the appurtenants thereof subject to the terms of the said decree or concession, and are also entitled to all the rights privileges and benefits by the said decree or concession granted so far as the same relate to the said railway. *And whereas* under the articles of association of the company, the board of directors have the power from time to time, as they may deem expedient for the purposes of the company, of borrowing any sum or sums of money not exceeding in the whole the sum of 100,000*l.* on bonds or debentures or other securities under the seal of the company, or by mortgage of any part or parts of the property of the company at such rate of interest, on such terms and in such manner as they may think proper. *And whereas* by a resolution of the board of directors the company have determined to create and issue 1st mortgage debentures in the form set forth in the schedule hereto for the sum of 100*l.* each up to an amount not exceeding in the whole the sum of 100,000*l.*, it being intended that such debentures to the amount of 50,000*l.* only shall be issued in the first instance, and shall bear interest at the rate of 5*l.* 10*s.* per cent. per annum, payable half-yearly, on the 1st day of January and the 1st day of July in every year (the first of such half-yearly

payments to be made on the 1st day of July, 18) until paid off, and that the principal moneys secured by the said debentures shall be paid off in twenty years, from the 1st day of July, 18 , by the application on the 1st day of July in each year, commencing with the 1st day of July 18 , of a capital sum of 2,500*l.* in addition to the sums due by way of interest towards the redemption of the said debentures, and that the debentures to be thereby redeemed in each year shall be determined by a drawing, to take place at the office of the company in London, in the presence of a notary public on or before the 1st day of June, in such year, until all the said debentures have been redeemed. *And whereas* by a further resolution of the board of directors the company have determined to further secure the payment of the principal and interest from time to time payable on all or any such debentures up to an amount not exceeding in the whole the sum of 100,000*l.* in manner hereinafter appearing:—

NOW THIS INDENTURE WITNESSETH, that in presence of such determination, and in consideration of the premises, the company do hereby grant assign and transfer unto the said A. B. and C. D., their heirs, executors and administrators,

(First—*The railway of the company :*)

(Secondly—*The said decree or concession, and all the benefit and advantage thereof, &c. :*)

(Thirdly—*The plant, rolling stock, and other property of the company in the dominions of the said government:*)

To HOLD to the said A. B. and C. D., &c.,

ON TRUSTS—To permit company to enjoy and work the railway, &c., until default made for three months in payment of some principal or interest intended to be secured by the debentures to be issued as aforesaid or by these presents. On such default (if in their discretion they think fit) to appoint a receiver, and apply moneys received (after payment of costs &c.) 1st. In payment of arrears of interest due on outstanding debentures : 2ndly. In redemption of such debentures as ought to have been, but through default of the company, have not been redeemed ; debentures drawn in any year being among themselves redeemable *pari passu*, but having priority over those drawn in any subsequent year : 3rdly. In providing for the due redemption of the remaining debentures in subsequent years.

POWER OF SALE, with usual auxiliary clauses, to trustees on such default as aforesaid, in pursuance of a resolution to be passed by a meeting of

debenture holders, fourteen days notice of intended exercise of power to be given to company, and power not to be exercised unless default is continued: said proceeds of sale to be applied (after payment of costs, &c.), in payment of principal and interest secured by all outstanding debentures, rateably and without preference on account of priority of issue, or of any debenture having been drawn or otherwise, but so that interest shall have priority over principal, and as to any surplus in trust for company.

COVENANTS—Usual covenants by company with trustees for title and further assurance; and to pay to each of trustees by way of remuneration 100*l.* per annum; *and*

That sum of 100,000*l.* to be secured by the said debentures shall be a first charge on the premises; *and*

That (subject to provisions hereinafter contained for drawing of debentures and the priorities of payment only to be thereby created), the said debentures shall all rank *pari passu*; *and*

That the company will in each year commencing on the day of , 18 , apply a sufficient sum in or towards payment of 5*l.* per cent. of the whole principal money intended to be secured by the said debentures up to the amount of 50,000*l.* to be issued in the first instance, that is to say, in the redemption of twenty-five of such debentures whereof the denoting numbers shall be determined by means of drawings to be made for the purpose in or for such year. And that the company will accordingly cause such annual drawings to be made at their office in London in the presence of a notary public, on or before the day of , 18 , and on or before day of , in every subsequent year, and will immediately after any such drawing has been made cause advertisements of the denoting numbers of the debentures so drawn to be inserted in at least one daily newspaper circulating in London: Provided always, and it is hereby declared that, if in any year the company make default in causing such drawing to be made or such advertisements to be inserted as aforesaid, it shall be lawful for the trustees or trustee to cause a like drawing to be made at some place to be fixed by them or him, in the presence of a notary public, and advertisements of the denoting numbers of the debentures so drawn to be inserted in at least one such newspaper as aforesaid.

POWER for trustees (and obligation on requisition of ten debenture holders holding debentures for not less than one-tenth in amount of the whole of the

debentures for the time being unredeemed) to convene by advertisement a meeting of debenture holders; if within fourteen days after requisition such advertisement is not duly inserted, requisitionists may themselves summon a meeting in like manner. At such meeting ten persons holding not less than one-fourth in amount of debentures for time being unredeemed, to be a quorum: one of trustees if present and willing to be chairman; if not, chairman to be elected. If previously to the meeting default has occurred rendering the power of sale exercisable, the meeting may by a resolution, affirmed by a majority of not less than three-fourths in number and value of the debenture holders present at any such meeting determine that all or any of the said rights and powers shall be exercised. And thereupon by a further resolution affirmed in like manner may require the trustees or trustee to exercise such rights and powers accordingly, or may require the resignation of the trustees or trustee, and by the same or by a further resolution to be affirmed in like manner may name new trustees or a new trustee to be appointed in the place of any trustees or trustee resigning; and by the same or by a further resolution or resolutions to be affirmed in like manner may make any arrangements for the carrying out of the previous resolutions or otherwise for the realisation of the security by these presents and by the said debentures intended to be made. Resolution to bind all debenture holders though not present; minutes signed by chairman to be conclusive evidence; trustees or chairman (notwithstanding any notice) not to be bound by or recognise any right or interest in any person other than the bearer of any debenture or of any coupon for interest due on any debenture to any money secured or represented by such debenture or coupon.

RECEIPT CLAUSES (delivery to trustees of any debenture or coupon to be sufficient discharge to them for principal or interest, as the case may be; and the receipts of trustees for any purchase money to be a discharge).

POWER TO APPOINT NEW TRUSTEES.

The Schedule above referred to.

The Railways Company, Limited, per cent. first mortgage loan for an amount not exceeding £ sterling

£ Debenture, No.

The Company, Limited, hereby promise to pay the

bearer of this debenture the principal sum of with interest thereon, at the rate of per cent. per annum, at the times and in the manner following, viz., the said principal sum of on the day of , or on the day of next following the day on which this debenture shall be drawn for redemption or presentation, and against delivery of this debenture with all the undue coupons attached to it, and to pay the interest on the said principal sum at the rate aforesaid half yearly on the day of , and the day of in each year, up to and including the day on which this debenture will be redeemable on presentation, and against delivery of the proper coupon.

COUPON.—The Company, Limited, per cent. first mortgage loan for an amount not exceeding £ Debenture, No. £ interest due , 18 , (less tax), No. , payable at the registered offices of the company in London.

Memorandum.

This debenture is one of a series for an amount not to exceed in the whole the sum of £ , the payment whereof is secured by a mortgage of the Company's concessions railway works rolling and fixed stock and plant, and other property in , effected by a deed dated the day of 18 , and made between the said company of the one part, and of the other part. This debenture is one of a first issue for the amount of £ , to form part of such series, and is issued upon and subject to the terms and conditions contained in the above-mentioned deed. The principal of the debentures of this issue will be redeemed by the application of a sufficient sum to the redemption of debentures for the sum of £ , in all to be drawn in each year, commencing with the day of . The annual drawings will take place at the company's registered offices in London, in the presence of a notary public on or before the day of in each year, commencing with the day of , and the debentures drawn for redemption will immediately afterwards be advertised by their denoting numbers in at least one daily newspaper circulating in London. No drawn debenture will bear interest against the company after the day fixed for the redemption of it.

FORMS RELATING TO MANAGEMENT AND ADMINISTRATION OF COMPANIES AND ASSOCIATIONS.

No. 28.

Notice of the Situation of the Registered Office of the Company.

TO THE REGISTRAR OF JOINT STOCK COMPANIES.

The Company hereby give you notice, in accordance with the Companies Act, 1862, that the registered office of the company is situate at

Dated the day of }

This notice must be signed by a director, secretary, or other authorized officer to the company.

No. 29.

Notice of Ordinary General Meeting.

To be made Extraordinary for the purpose of passing a Special Resolution.

Notice is hereby given, that an ordinary general meeting of the Kingston Dock Company, Limited, will be held at , on the day of at of the clock, for the purpose of considering the report of the directors, passing the accounts, electing auditors, and transacting other business; and that as soon as such business is concluded the meeting will resolve itself into an extraordinary meeting, for the purpose of considering and of passing (if approved) the following resolutions which are intended to be proposed to the meeting, viz.:—that the following Articles be added to the Articles of Association of the company.

1st. The directors may from time to time borrow on behalf of the company any sums of money not exceeding in the aggregate £

2nd. The directors may secure the repayment of any money authorized to be borrowed by them, by mortgage of the undertaking of the company, and of calls made on the members, or by either of the above means, or by mortgage of any part of the property of the company, or by the issue on behalf of the company of debentures promissory notes bills of exchange, or such other securities as they deem expedient.

3rd. Any mortgage may contain a power of sale. It may also contain such other powers and be subject to such restrictions as the directors think expedient, and any debenture or promissory note may be made in such manner, and in so far as the law permits, may contain such provisions as the directors think expedient.

4th. If after having borrowed any money authorized to be borrowed, the company pay off the same, the directors may again reborrow on behalf of the company the amount so paid off, and so on from time to time.

These resolutions will of course be varied according to circumstances.

No. 30.

Form of Special Resolution.

At an Extraordinary General Meeting of the Kingston Dock Company, Limited, held at , on the day of at of the clock.

Mr. in the chair.

It was moved by , seconded by

Resolved unanimously by (or by a majority of upwards of three-fourths) the members present in person or by proxy at such meeting, that the following Articles be added to the Articles of Association of the company.

(The resolutions numbered 1, 2, 3, 4, in the preceding notice of meetin will be repeated here.)

No. 31.

Notice of Meeting to Confirm Special Resolution.

Notice is hereby given, that an Extraordinary General Meeting of the Kingston Dock Company, Limited, will be held at
on the day of , at
of the clock, for the purpose of confirming certain resolutions passed at an extraordinary general meeting of the company, held at
on the day of , whereby it was resolved that the following Articles be added to the Articles of Association of the company, that is to say.

(The foregoing resolutions will be repeated here.)

No. 32.

Resolution Confirming Previous Resolution.

At an Extraordinary General Meeting of the Kingston Dock Company, Limited, held at , on the day of
Mr. in the chair. Mr.
read to the meeting minutes of the resolutions passed at a meeting of the company held at , on the day of ,
whereby it was resolved that the following Articles be added to the Articles of Association of company.

(The foregoing resolutions will be repeated here.)

It was then moved by , and seconded by
, that the above resolutions be confirmed, and it was resolved unanimously by (or by a majority) of the members present in person or by proxy at such meeting, that the above resolutions be confirmed, and the same were confirmed accordingly.

Form of Petition for Winding-up a Company subject to the supervision of the Court (*a*.)

In Chancery.

In the matter of the Companies Acts, 1862 and 1867, and of the the Northumberland and Durham District Banking Company.

To the Right Honourable the Lord High Chancellor of Great Britain.

The humble petition of G. M.
of
in the county of
a contributory of the above-mentioned company, and W. J. C.
of in the county
of a creditor of the said
company.

Sheweth,

1. In the year 1836 divers persons agreed together to establish a Joint Stock Banking Company in England according to the provisions of an Act of Parliament passed in the seventh year of the reign of his late Majesty King George the Fourth, chapter 46.

2. By an indenture dated the first day of July, 1836, and made between the persons therein described as the first Board of Directors of the Northumberland and Durham District Banking Company of the first part, the persons therein described as the registered officers o the company of the second part, the persons therein described as the trustees of the said company of the third part, and the persons whose names were thereunto subscribed and seals affixed, of the fourth part: It was amongst other things witnessed that they the several persons parties thereto who were thereinafter distinguished by the title of proprietors, and such other persons who for the time being should become proprietors of shares in the capital of the said company, should constitute and form an association or public joint stock

(*a*) This Form was used in the case of the Northumberland and Durham District Banking Company, and has been adapted to the Companies Act, 1862

banking co partnership, to be called "The Northumberland and Durham District Banking Company," and certain of the regulations of the said company were that the capital or joint stock of the said company should consist of a sum of 500,000*l.* sterling, divided into 50,000 shares of 10*l.* each, with power to increase the capital by additional shares:

That the business of the said company should be exclusively confined to such as is usually carried on under the term banking:

That such part of the net profits of the company in every year, as the directors might think fit, should be retained and form part of a fund to be called the guarantee fund;

That such guarantee fund should be carried to a separate account in the books of the company, and should accumulate at interest and be a reserved fund, to meet losses and prevent fluctuations of the dividends.

Another of the regulations of the company was, that if at any time the losses of the company should have exhausted not only the whole of the guarantee fund, but also one-fourth of the capital of the company which should have been actually advanced and paid up by the shareholders, without regard to the amount of the subscribed capital of the company, then the board of directors of the company for the time being should, with all convenient speed after the above-mentioned state of the company should have become known to them, call a special general meeting of the shareholders in manner therein provided, and should submit to such meeting a full and general statement of the affairs and concerns of the company, if required at such meeting, verifying such statement by the production of the books, documents, and vouchers of the company; and in case it should appear at such meeting that the losses of the company should have exhausted the whole of the guarantee fund, and also one-fourth part of the then paid-up capital, then the chairman of such meeting should, if required by a majority of such company, declare the company dissolved, and the same should stand and be dissolved accordingly to all intents and purposes, except for the purposes of winding up and settling the affairs of the company.

3. On the 26th day of November, 1857, the company became unable to meet its liabilities, and stopped payment.

4. The losses of the company have exhausted the whole of the guarantee fund, also one-fourth at the least of the paid up capital of the company, and two other fourths of the said paid up capital are either lost or have become unavailable.

5. On the 30th of December, 1863, the said company was duly registered as a company under the Companies Act, 1862.

6. (*States the summoning by the directors of a meeting of the proprietors of the said company, for the purpose of considering and taking such steps as might be deemed expedient for winding-up the company voluntarily under the provisions of the Companies Acts*, 1862 and 1867.)

(*States holding of meeting and passing of resolution.*)

(1.) That it appears to the meeting that the losses of the company have exhausted the fund in the deed of settlement of the company called the guarantee fund, and also one-fourth part of the paid-up capital of the company, and it also appears that three-fourths of the said capital have become unavailable by reason of the aforesaid losses of the company, and of the remaining capital being vested in securities, which are not at present convertible.

(2.) That having regard to the circumstances mentioned in the last resolution, all the shareholders of the company present at this meeting require that the chairman of this meeting do declare this company to be dissolved, and that the same stands and is dissolved accordingly.

(3.) That the event having occurred upon the occurence of which it is provided by the deed of settlement that the company is to be dissolved, the company be wound up voluntarily under the Companies Acts, 1862 and 1867.

(4.) *Appointment of liquidators for the purpose of winding-up the affairs of the company, and distributing the assets thereof pursuant to the said Act. Provisions for vacancy in office of liquidators. Remuneration of liquidators. Approval of a certain arrangement with creditors.*

That after the passing of the said resolutions, and upon the requisitions of all the shareholders present, the chairman declared as follows (that is to say): Upon the requisition of all the shareholders present at this meeting, I hereby declare that the Northumberland and Durham District Banking Company is dissolved, and that the same stands and is dissolved accordingly, subject nevertheless to the provisions of the deed of settlement of the company, and of the Companies Acts, 1862 and 1867.

8. *States meeting of creditors, and their intention to support voluntary winding-up.*

9. Your petitioner, G. M., is a holder of 240 shares in the said company, all of which have been fully paid up.

10. Your petitioner, W. J. C., is a creditor of the said company to an amount of more than 50*l.*, that is to say, to the amount of 2,800*l.* for moneys deposited.

11. Your petitioners believe that it will be advantageous, both for the creditors and contributories of the company, that under the circumstances of the case, the company should be wound up voluntarily, and your petitioners believe that a very large majority, both of the creditors and contributories, were and are in favour of such voluntary winding up, and to that end of having the said resolutions adopted and carried out.

12. Your petitioners are desirous that the company should be wound up, and are advised that it is of the utmost importance that an order for that purpose should be made.

Your petitioners therefore humbly pray that the said voluntary winding-up, which was resolved upon at the meeting so held as above-mentioned, may be allowed to continue, subject to the supervision of the Court, with liberty to any creditor or contributory of the company to apply to the Court, or that an order may be made for winding-up the said company by the Court, under the provisions of the Companies Acts, 1862 and 1867, or that your Lordship will be pleased to make such other order as to your Lordship shall seem meet (*a*).

No. 33.

FORMS REQUIRED IN REGISTERING AN EXISTING JOINT STOCK (*a*) COMPANY UNDER THE COMPANIES ACT, 1862, AS A COMPANY LIMITED BY SHARES.

Notice of General Meeting (*b*).

Notice is hereby given that a General Meeting of the Company will be held at on the day of

(*a*) Vice-Chancellor Kindersley made an order directing that the voluntary winding-up should continue, subject to the supervision of the Court, but that order was reversed by appeal; but see now cases cited in notes to ss. 147, 149, pp. 363, 364.

(*a*) For definition of a Joint Stock Company, see s. 181 of the Act of 1862, p. 392

(*b*) This notice should be served in the way in which notices of a general meeting are directed to be served by the regulations of the company.

, at of the clock precisely, for the purpose of procuring the assent of the company to its being registered under the Companies Act, 1862, as a company limited by shares, and to change the name of the company, by the addition of the word "limited" to its present name.

See s. 179 of the Act of 1862, p. 390.

No. 34.

Form of Resolution.

Resolution passed at a General Meeting for registering the Company under the Companies Act, 1862, as a company limited by shares.

At a general meeting of the Company, summoned for the purpose of procuring the assent of the company to its being registered under the Companies Act, 1862, as a company limited by shares, and to change its name by the addition of the word "limited" to its former name thereof,

It was resolved, (*a*)

That this company be registered under the Companies Act, 1862, as a company limited by shares, and that the name of the company be changed to that of "The Company, Limited."

Signed, Chairman of the meeting.

See s. 179, p. 390.

No. 35.

Application for Registration.

The Company constituted by

(*a*) Here insert "unanimously," or "by a majority of more than three-fourths in number and value of the members present personally or by proxy," as the case may be.

dated the , desires to register itself as a company limited by shares, under the Companies Act, 1862, by the name of

and for that purpose, presents the documents mentioned in the accompanying lists (*a*) for registration under the said Act, (*b*)

Dated
day of

No. 36.

Declaration by two Directors or two other Principal Officers Verifying Documents.

THE COMPANIES ACT, 1862.

Company Limited.

We
and of two
of the (*c*) of the above-named Company,
Do solemnly and sincerely declare, FIRSTLY, that the Document accompanying this declaration, and marked with the letter , is a true Copy of the (*deed of settlement, Act of Parliament, &c.*) constituting the Company; SECONDLY, that the document marked with the letter
and accompanying this declaration, is a true list of the names, addresses, and occupations of all persons who on the day of were members of the said Company, with the addition of the Shares held by such members respectively, *with each share distinguished by its number;* (*d*) THIRDLY, that the document marked with the letter , and accompanying this declaration, is a true statement of the nominal Capital of the said Company, and of the number of Shares into which that Capital is.

(*a*) See s. 183, p 393.

(*b*) This application is to be signed by a director, secretary, or other authorized officer of the company.

(*c*) Directors or other principal officers.

(*d*) If the shares are not distinguished by numbers, omit the words in italics, and add "but such shares not being numbered, it is impossible to distinguish them by their numbers."

divided, and of the number of shares taken, and of the amount paid on each share, and also of the name of the company, made up to the day of ; FOURTHLY, that the document marked with the letter , and accompanying this declaration, is a true copy of a resolution passed by the company, assenting to its being registered under the Companies Act, 1862, as a company limited by shares, and altering its name accordingly. And we make this solemn Declaration, conscientiously believing the same to be true, and by virtue of the provisions of an Act of Parliament made and passed in the Session holden in the fifth and sixth years of the reign of King William the Fourth, Chapter 62, intituled "An Act to repeal an Act of the present Session of Parliament, intituled 'An Act for the more effectual Abolition of Oaths and Affirmations taken and made in various departments of the State,' and to substitute Declarations in lieu thereof, and for the more entire suppression of voluntary and extrajudicial Oaths and Affidavits, and to make other provision for the Abolition of Unnecessary Oaths."

Declared at
this 18 { *Signatures of two Directors or other principal Officers.* }

NOTE.—Each document should be identified by a certificate of the officer before whom the declaration is made. A convenient form of certificate is as follows:—"I certify that this is the document referred to as the document marked in the declaration of two of the of the company, made before me, this day of

See s. 186, p 395.

APPENDIX III.

OTHER ACTS RELATING TO COMPANIES, &c.

PARTNERSHIP LAW AMENDMENT ACT, 28 & 29 Vict., c. 86.

INDUSTRIAL AND PROVIDENT SOCIETIES ACT, 1862, 25 & 26 Vict., c. 87.

INDUSTRIAL AND PROVIDENT SOCIETIES ACT, 1867, 30 & 31 Vict., c. 117.

INDUSTRIAL AND PROVIDENT SOCIETIES ACT, 1871, 34 & 35 Vict., c. 80.

SALE AND PURCHASE OF BANK SHARES ACT, 30 & 31 Vict., c. 29.

LIFE ASSURANCE COMPANIES ACT, 1870, 33 & 34 Vict., c. 61.

LIFE ASSURANCE COMPANIES ACT, 1871, 34 & 35 Vict., c. 58.

LIFE ASSURANCE COMPANIES ACT, 1872, 35 & 36 Vict., c. 41.

28 & 29 VICT. CAP. 86.

An Act to amend the Law of Partnership.

[*5th July*, 1865.]

For observations on this Act see above, pp. 3, 25.

WHEREAS it is expedient to amend the Law relating to partnership: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present parliament assembled, and by the authority of the same, as follows:

The advance of money on contract to receive a share of profits not to constitute the lender a partner.

I. The advance of money by way of loan to a person engaged or about to engage in any trade or undertaking, upon a contract in writing with such person that the lender shall receive a rate of interest varying with the profits, or shall receive a share of the profits arising from carrying on such trade or undertaking, shall not, of itself, constitute the lender a partner with the person or the persons carrying on such trade or undertaking, or render him responsible as such.

The remuneration of agents, &c., by share of profits not to make them partners.

II. No contract for the remuneration of a servant or agent of any person engaged in any trade or undertaking by a share of the profits of such trade or undertaking, shall, of itself, render such servant or agent responsible as a partner therein, nor give him the rights of a partner.

Certain annuitants not to be deemed partners.

III. No person being the widow or child of the deceased partner of a trader, and receiving by way of annuity a portion of the profits made by such trader in

his business, shall, by reason only of such receipt, be deemed to be a partner of or to subject to any liabilities incurred by such trader.

Receipt of profits in consideration of sale of goodwill not to make the seller a partner.

IV. No person receiving by way of annuity or otherwise a portion of the profits of any business, in consideration of the sale by him of the goodwill of such business, shall, by reason only of such receipt, be deemed to be a partner of or be subject to the liabilities of the person carrying on such business.

In case of bankruptcy, &c., lender not to rank with other creditors.

V. In the event of any such trader as aforesaid being adjudged a bankrupt, or taking the benefit of any Act for the relief of insolvent debtors, or entering into an arrangement to pay his creditors less than twenty shillings in the pound, or dying in insolvent circumstances, the lender of any such loan as aforesaid shall not be entitled to recover any portion of his portion of his principal, or of the profits or interest payable in respect of such loan, nor shall any such vendor of a goodwill as aforesaid be entitled to recover any such profits as aforesaid until the claims of the other creditors of the said trader for valuable consideration in money or money's worth have been satisfied.

Interpretation of "person."

VI. In the construction of this Act the word "Person" shall include a partnership firm, a Joint Stock Company, and corporation.

25 & 26 VICT. CAP. 87.

An Act to consolidate and amend the Laws relating to Industrial and Provident Societies.

[*7th August*, 1862.]

Any company, carrying on a labour trade or handycraft other than banking, (*a*) may register under this Act (see

(*a*) So much of s. 3 as excepts the working of mines and quarries from the objects for which a company may be established under this Act is repealed by 30 & 31 Vict. c. 117, s. 1.

sect. 3), if it prefer to do so, instead of registering under the Companies Act, but this Act does not apply to benefit building societies, *Midland Counties Benefit Building Society*, 33 L. J. Ch. 739; 11 Jur. (N. S.) 229.

The advantages presented by this Act are the exemptions contained in section 15, (*b*) and the possibility of a resort under section 17 to the county court for the purpose of winding up, instead of to the Court of Chancery. This Act, however, is fitted only for small ventures, as an individual cannot hold or claim any interest in the company exceeding the sum of 200*l*. With the above exceptions, there seems little distinction between the two Acts, this Act being in many provisions a copy of the Companies Act, 1862.

WHEREAS by the Industrial and Provident Societies Act, 1852, it is enacted, that it shall be lawful for any number of persons to establish a society under the provisions thereof and of the therein-recited Act, for the purpose of raising by voluntary subscriptions of the members thereof a fund for attaining any purpose or object for the time being authorized by the laws in force with respect to friendly societies or by the said recited Act, by carrying on or exercising in common any labour trade or handycraft or several labours trades or handycrafts except the working of mines, minerals, or quarries beyond the limits of the United Kingdom of Great Britain and Ireland, and also except the business of banking, whether in the said United Kingdom or elsewhere; and that the said Act shall apply to all societies already established for any of the purposes herein mentioned, so soon as they shall conform to the provisions thereof: And whereas by an Act passed in the seventeenth and eighteenth years of Her present Majesty, chapter twenty-five, various provisions were made for the better enabling legal proceedings to be carried on in any matter concerning the societies formed under the said Act of 1852: And whereas the last-mentioned Act was amended by an

15 & 16 Vict. c. 31.

17 & 18 Vict. c. 25.

(*b*) See now 30 & 31 Vict. c. 117, s. 3.

Act passed in the first session of the nineteenth and twentieth years of her present Majesty, chapter forty: And whereas various societies have been formed and are now carrying on business under the provisions of the said recited Acts, and it is desirable to consolidate and amend the laws relating to such societies: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present parliament assembled, and by the authority of the same, as follows:

19 & 20 Vict. c. 40.

Recited Acts repealed.

I. The Industrial and Provident Societies Act, 1852, and the said recited Acts for the amendment thereof, are hereby repealed from the passing of this Act.

As to societies registered under recited Acts.

II. All societies registered under the Industrial and Provident Societies Act, 1852, shall be entitled to obtain a certificate of registration on application to the Registrar of Friendly Societies, and for which certificate no fee shall be payable to the registrar.

Constitution of societies under this Act.

III. Any number of persons, not being less than seven, may establish a society under this Act for the purpose of carrying on any labour, trade, or handycraft, whether wholesale or retail, except [*the working of mines and quarries, and except*] (*a*) the business of banking, and of applying the profits for any purposes allowed by the Friendly Societies Acts, or otherwise permitted by law.

Rules.

IV. The rules of every such society shall contain provisions in respect of the several matters mentioned in the schedule annexed to this Act.

The schedule to the amending Act of 1867 is substituted for this schedule.

Registration of society.

V. [*Two copies of the rules shall be forwarded to the Registrar of Friendly Societies of England, Scotland, or Ireland, according to the place where the office of the*

(*a*) Repealed by 30 & 31 Vict., c. 117, s. 1.

society is situate, and shall be dealt with by him in the manner provided by the Friendly Societies Act, 1855; and he shall thereupon give him his certificate of registration, and such certificate shall in all cases be conclusive evidence that the society has been duly registered, and thereupon the members of such society shall become a body corporate, by the name therein described, having a perpetual succession and a common seal, with power to hold lands and buildings, with limited liability.]

Repealed by 30 & 31 Vict. c. 117, s. 1, and re-enacted *ib.* s. 4, with the addition of a power to "purchase, erect, sell, and convey," as well as to "hold" lands and buildings. This provision is in turn explained and amended by 34 & 35 Vict. c. 80 *infr.*

Certificate, of registration to vest all property in society now held in trust for society.

VI. The certificate of registration shall vest in the society all the property that may at the time be vested in any person in trust for the society; and all legal proceedings then pending by or against any such trustee or other officer on account of the society may be prosecuted by or against the society in its registered name without abatement.

Queensbury Ind. Socy. v. *Pickles*, L. R., 1 Ex. 1.

Copy of rules to be delivered to persons on demand.

VII. A copy of the rules shall be delivered by the society to every person, on demand, on payment of a sum not exceeding one shilling.

No society to be registered by same name as that of any existing society.

VIII. No society shall be registered under a name identical with that by which any other existing society has been registered, or so nearly resembling such name as to be likely to deceive the members or the public, and the word "limited" shall be the last word in the name of every society registered under this Act (*a*).

Member's interests limited to 200*l*.

IX. [*No member shall be entitled, in any society registered under this Act, to hold or claim any interest exceeding the sum of two hundred pounds.*]

Repealed 30 & 31 Vict. c. 117, s. 1.
See s. 2 of that Act.

(*a*) See 25 & 26 Vict., c. 89, s. 20.

X. Every society registered under this Act shall paint or affix, and shall keep painted or affixed, its name on the outside of every office or place in which the business of the society is carried on, in a conspicuous position, in letters easily legible, and shall have its name engraven in legible characters on its seal, and shall have its name mentioned in legible characters in all notices, advertisements, and other official publications of such society, and in all bills of exchange, promissory notes, endorsements, cheques, and orders for money or goods purporting to be signed by or behalf of such company, and in all bills of parcels, invoices, receipts, and letters of credit of the society.

Publication of name by a society. See 25 & 26 Vict. c. 89, s. 41.

XI. If any society under this Act does not paint or affix, and keep painted or affixed, its name in manner directed by this Act, it shall be liable to a penalty not exceeding five pounds for not so painting or affixing its name, and for every day during which such name is not so kept painted or affixed; and if any officer of such society or any person on its behalf uses any seal purporting to be a seal of the society whereon its name is not so engraven as aforesaid, or issues or authorizes the issue of any notice, advertisement, or other official publication of such society, or signs or authorizes to be signed on behalf of such society any bill of exchange, promissory note, endorsement, cheque, order for money or goods, or issues or authorizes to be issued any bill of parcels, invoice, receipt, or letter of credit of the society, wherein its name is not mentioned in manner aforesaid, he shall be liable to a penalty of fifty pounds, and shall further be personally liable to the holder of any such bill of exchange, promissory note, cheque, or order for money or goods, for the amount thereof, unless the same is duly paid by the society.

Penalties on non-publication of name, &c. See 25 & 26 Vict. c. 89, s. 42

XII. Every society under this Act shall have a registered office to which all communications and notices may be addressed: if any society registered under this Act carries on business without having such an office,

Every society to have a registered office. See 25 & 26 Vict. c. 89, 39.

Penalty on default.

it shall incur a penalty not exceeding five pounds for every day during which business is so carried on.

Notice of situation of registered office. See 25 & 26 Vict. c. 89, s. 40.

XIII. Notice of the situation of such registered office, and of any change therein, shall be given to the registrar, and recorded by him: until such notice is given the society shall not be deemed to have complied with the provisions of this Act.

"Registrar" *i.e.*, of Friendly Societies, s. 14 of Act of 1867.

Signature, and effect of rules. See 25 & 26 Vict. c. 89, s. 16.

XIV. The rules of every society registered under this Act shall bind the society, and the members thereof, to the same extent as if each member had subscribed his name and affixed his seal thereto, and there were in such rules contained a covenant on the part of himself, his heirs, executors and administrators, to conform to such rules subject to the provisions of this Act; and all moneys payable by any member to the society in pursuance of such rules shall be deemed to be a debt due from such member to the society.

Application of Friendly Societies Acts to this Act.

XV. [*The provisions of the Friendly Societies Acts shall apply to societies registered under this Act in the following particulars:—*

Exemption from stamp duties and income tax:
Settlements of disputes by arbitration or justices:
Compensation to members unjustly excluded:
Power of justices or county courts in case of fraud:
Jurisdiction of the registrar.]

Power to member to nominate persons into whose name his interest may be transferred at his death.

XVI. [*The provisions of the Friendly Societies Act,* 1854, *whereby a member of any society registered thereunder is allowed to nominate any persons to whom his investment in such society shall be paid, shall extend, in the case of societies registered under this Act, to allow any member thereof to nominate any persons into whose name his interest in such society at his decease shall be*

transferred; provided nevertheless, that any such society may, in lieu of making such transfer, elect to pay to any persons so nominated the full value of such interest.]

Sections 15 and 16 are repealed by 30 & 31 Vict. c. 117, s. 1. See in substitution sections 3 and 5 of the last mentioned Act, and as to exemption from income tax, s. 12.

XVII. Any society registered under this Act may be wound up either by the court or voluntarily, in the same manner and under the same circumstances under and in which any company may be wound up under any Acts or Act for the time being in force for winding up companies; and all the provisions of such Acts or Act with respect to winding up shall apply to such society, with this exception, that the court having jurisdiction in the winding up shall be the county court of the district in which the office of the society is situated.

As to the winding up of societies.

XVIII. In case of the dissolution of any such society, such society shall nevertheless be considered as subsisting, and be in all respects subject to the provisions of this Act, so long and as far as any matters relating to the same remain unsettled, to the intent that such society may do all things necessary to the winding up of the concerns thereof, and that it may be sued and sue, under the provisions of this Act, in respect of all matters relating to such society.

Dissolution of society not to prevent winding up of its affairs.

XIX. The provisions of the Joint Stock Companies Acts as to bills of exchange and the admissibility of the register of shares in evidence shall apply to all societies registered under this Act.

Provisions of Joint Stock Companies Acts to apply.

XX. In the event of a society registered under this Act being wound up, every present and past member of such society shall be liable to contribute to the assets

Liability of present and past members of society.

of the society to an amount sufficient for payment of the debts and liabilities of the society, and the costs, charges, and expenses of the winding up, and for the payment of such sums as may be required for the adjustment of the rights of the contributories amongst themselves, with the qualifications following; (that is to say):

(1.) No past member shall be liable to contribute to the assets of the society if he has ceased to be a member for a period of one year or upwards prior to the commencement of the winding up:

(2.) No past member shall be liable to contribute in respect of any debt or liability of the society contracted after the time at which he ceased to be a member:

(3.) No past member shall be liable to contribute to the assets of the society unless it appears to the court that the existing members are unable to satisfy the contributions required to be made by them in order to satisfy all just demands upon such society:

(4.) No contribution shall be required from any member exceeding the amount (if any) unpaid on the shares in respect of which he is liable as a past or present member:

See note to s. 194 of Companies Act, 1862, *Fountain's Case*, 6 N. R. 75, 11 Jur. (N. S.) 553.

Society may be constituted under Companies Acts.

XXI. Any society registered under this Act may be constituted a company under the Companies Acts, by conforming to the provisions set forth in such Act, and thereupon shall cease to retain its registration under this Act.

Members may inspect books. See 25 & 26 Vict. c. 89 s. 32.

XXII. Every person or member having an interest in the funds of any society registered under this Act may inspect the books and the names of the members at all reasonable hours at the office of the society.

XXIII. The sheriff in Scotland shall within his county have the like jurisdiction as is hereby given to the judge of the county court in any matter arising under this Act. **Sheriff's jurisdiction in Scotland.**

XXIV. A general statement of the funds and effects of any society registered under this Act shall be transmitted to the registrar once in every year, and shall exhibit fully the assets and liabilities of the society, and shall be prepared and made out within such period, and in such form, and shall comprise such particulars as the registrar shall from time to time require; and the registrar shall have authority to require such evidence as he may think expedient of all matters required to be done, and of all documents required to be transmitted to him under this Act; and every member of or any depositor in any such society shall be entitled to receive, on application to the treasurer or secretary of that society, a copy of such statement, without making any payment for the same. **Annual returns to be prepared as registrar may direct.**

XXV. [*All penalties imposed by this Act, or by the rules of any society registered under this Act, may be recovered in a summary manner before two justices, as directed by any Act passed in the eleventh and twelfth years of the reign of Her present Majesty Queen Victoria, chapter forty-three, intituled An Act to facilitate the Performance of the Duties of Justices of the Peace out of Sessions within England and Wales with respect to summary Convictions and Orders.*] **Recovery of penalties. See 25 & 26 Vict. c. 89, s. 65.**

Repealed by 30 & 31 Vict. c. 117, s. 1. See in substitution s. 6 of that Act.

XXVI. This Act may be cited as "The Industrial and Provident Societies Act, 1862." **Short title.**

SCHEDULE OF MATTERS TO BE PROVIDED FOR IN THE RULES.

Section 14 of 30 & 31 Vict. c. 117 substitutes the schedule annexed to that Act for this schedule.

30 & 31 VICT. c. 117.

An Act to amend the Industrial and Provident Societies Acts.

[20*th August*, 1867.]

WHEREAS by the Industrial and Provident Societies Act 1862, the Industrial and Provident Societies Act 1852 and certain therein-recited Acts for the Amendment thereof were repealed, and provision was made for the constitution and regulation of such societies in future:

And whereas doubts having arisen as to the effect of the said Act in certain cases, it is expedient that the same should be removed, and that the provisions so made should be amended in other respects:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons in this present parliament assembled, and by the authority of the same, as follows:

Sect 48 of 18 & 19 Vict. c. 63, and Sects 5, 9, 15, 16, and 25 of 25 & 26

1. There shall be repealed, from and after the passing of this Act, the forty-eighth section of the eighteenth and nineteenth Victoria, chapter sixty-three, and fifth, ninth, fifteenth, sixteenth, and twenty-fifth sec-

tions of the recited Act, and so much of the third section as excepts the working of mines and quarries from the objects for which any society may be established under the Act. Vict. c. 87, repealed.

2. A society registered under this Act may hold in its registered name any amount of interest in any other society so registered, but if any other person hold or claim in any society so registered an interest exceeding two hundred pounds sterling, such person shall incur a penalty equal to the excess of such interest over the said sum. Limitation of interest of members.

3. The provisions following contained in the Acts under mentioned relating to Friendly Societies shall apply to all societies registered under this Act, and no such provision shall be affected in its application to such societies by its repeal in regard to Friendly Societies, unless the contrary be expressly declared by the Act repealing the same; and in applying such provisions words concerning the trustee of any society shall be taken to apply to the society, except the context precludes such construction; (that is to say,) Provisions of the Friendly Societies Acts applied to industrial and provident societies.

So much of the Friendly Societies Acts, 1855 and 1858, as relates to—

The punishment of fraud in witholding any money or other property belonging to any society: 18 & 19 Vict. c. 63, s. 24.

The determination of disputes by the county courts in England, the sheriffs court in Scotland, and the assistant barrister in Ireland, and the orders and proceedings for this purpose: 18 & 19 Vict. c. 63, ss. 41, 42, 43, and 21 & 22 Vict. c. 101, s. 1.

The reception of rules and other instruments in evidence: 18 & 19 Vict. c. 63, s. 30.

The exemption of rules and other instruments from stamp duty: 18 & 19 Vict. c. 63, s. 37

The power to any society to change its name 21 & 22 Vict. c. 101, s. 4.

Certificate of registration.

4. Two copies of the rules shall be forwarded to the registrar of friendly societies of England, Scotland, or Ireland, according to the place where the office of the society is situate, and shall be dealt with by him in the manner provided by "The Friendly Societies Act, 1855," and he shall thereupon give his certificate of registration, and such certificate shall in all cases be conclusive evidence that the society has been duly registered, and thereupon the members of such society shall become a body corporate, by the name therein described, having a perpetual succession and a common seal, with power to purchase, erect, and sell, and convey, or to hold lands and buildings, with limited liability.

See Industrial and Provident Societies Act, 1871, below.

Power to nominate persons unto whose name the interests of members may be transferred at their death.

5. A member of any society registered under this Act may, by any writing under his hand delivered at the registered office of the Society, appoint any person being the husband, wife, father, mother, child, brother, sister, nephew, or niece of such member, to whom his shares in the society shall be transferred at his decease, provided that the sum credited to the account of such member in the books of the society does not exceed fifty pounds sterling, and may from time to time revoke or vary any such nomination by a writing under his hand similarly delivered; and the secretary of every such society shall keep a book wherein the names of all persons so nominated shall be regularly entered, and the shares comprised in any such nomination shall be transferable to the nominee, although the rules of the society declare its shares to be generally not transferable: provided nevertheless, that the society may, in lieu of making such transfer, elect to pay to any nominee the full value of the shares comprised in the nomination to him, and shall pay him the full value of any such shares which, if transferred into his name, would

increase his interest in the society to an amount exceeding two hundred pounds sterling.

Recovery of penalties.

6. All penalties imposed by the Industrial and Provident Societies Act, 1862, or by this Act, or by the rules of any society registered under the said Act, shall be recoverable, with costs, and dealt with in a manner directed by the Friendly Societies Acts, in regard to the penalty thereby imposed, on any default in transmitting the returns thereby required, and at the suit of the registrar in the case of penalties imposed by the recited Act or by this Act, or in the case of penalties imposed by the rules of any society so registered at the suit of the society.

Alterations of or additions to rules to be registered.

7. Two copies of every alteration of or addition to the rules of every society registered under this Act, signed by seven members of the society, and countersigned by the secretary, shall be sent to the registrar for his certificate of registration, and shall be accompanied by a declaration in the form contained in the schedule hereto annexed; and no alterations of or additions to the rules of any society registered under this Act, made after the passing hereof, shall be valid until they are so certified.

Declarations to accompany copies.

Form of certificate.

8. The registrar shall give his certificates respectively in the forms contained in the said schedule in the cases thereto mentioned.

Penalties on not sending returns, &c.

9. All returns required under the twenty-fourth section of the recited Act to be made to the registrar of Friendly Societies shall be sent to him by each society registered thereunder on or before the first day of March in every year; and every such society which does not send any such return, or furnish copies thereof, or of its rules, as is required by the recited Act or hereby, shall incur a penalty not less than forty shillings nor exceeding five pounds for each such offence; and every person who makes or orders to be made any false statement or any omission in any such return with

intent to deceive the registrar, shall incur a penalty not exceeding fifty pounds sterling for each return so dealt with.

Form of rules provided as moved. (*Sic*)

10. The form of rules contained in the schedule hereto may be adopted by any society desirous of being registered under this Act, either without any addition or with any additions or alterations agreeable to law. (*a*)

Societies deemed to be established from registration under either Act.

11. Every society established previous to the passing of the recited Act for any of the purposes in such Act mentioned shall be deemed to be a society established under such Act from the registration of such society under the provisions of the recited Act or of this Act.

Exemption from income tax.

12. A society registered under this Act, and not allowing any member thereof to hold or claim any interest therein or monies therefrom exceeding in value the sum of two hundred pounds, shall not be chargeable with the duty under schedule (C.) or schedule (D.) of the Income Tax Acts: provided that the above exemption shall not be construed to relieve any member of such society, or person employed by such society, to whom any portion of the profits of the society shall be paid, from assessment to the said duties in respect of such payment in any case in which the total income of such member or other person, inclusive of his portion of the said profits, shall amount to the sum of one hundred pounds or upwards.

Lists to be returned to commissioners for special purposes containing the names, &c., of persons entitled to profits.

13. The secretary or other managing officer of any society registered under this Act shall, within twenty-one days after the sixth day of April in every year, transmit to the commissioners for special purposes of the Income Tax Acts a list containing the name and residence of every member of such society or other person to whom profits made by the society have been paid or shall be payable within or for the year ended

(*a*) The Schedule contains no form of rules, but only a list of matters to be provided for by rules.

on the fifth day of April preceding, and the amounts paid or payable to each member or other person, and thereupon the special commissioners shall take the necessary steps for charging the said duties, under the regulations of the Income Tax Acts, on such of the said persons as may be liable thereto; and any secretary or other officer of any such society who shall neglect to make out and deliver to the commissioners for special purposes, within the time specified by this Act, a list containing the particulars hereby required, shall forfeit and pay the sum of fifty pounds, to be recovered in like manner as penalties imposed for like default by the Income Tax Acts.

Short title.

14. The recited Act, so far as it is not hereby repealed, shall be incorporated with this Act, and may be cited with it as the Industrial and Provident Societies Act, 1867, and the schedule hereto annexed shall be substituted for the schedule thereto; all societies registered under the recited Act shall be taken to be registered under this Act; and in construing the recited Act and this Act provisions relating to the rules or name of any society shall apply to the registered rules and name thereof for the time being, and the registrar shall mean the registrar of Friendly Societies for England, Scotland, or Ireland, according to the place where the office of the society is situate.

Construction of Act.

SCHEDULE REFERRED TO IN THIS ACT.

Of Matters to be provided for by the Rules of Societies established under this Act.

1. Object name and place of office of the society.

2. Terms of admission of members.

3. Mode of holding meetings and right of voting, and of making or altering rules.

4. Determination whether the shares, or any number thereof,

shall be transferable, and in case it be determined that the shares, or any number thereof, shall be transferable; provision for the form of transfer and registration of shares, and for the consent of the committee of management and confirmation by a general meeting of the society; and in case it be determined that the shares shall not be transferable, provision for paying to members the balance due to them on withdrawing from the society.

5. Provision for the audit of accounts.

6. Determination whether and by what authority any part of capital may be invested in or on the security of another society, provided that no such investment be authorized in any society not registered under this Act, or under the Companies Act as a company with limited liability.

7. Determination whether and how members may withdraw from the society, and provisions for the claims of executors, administrators, or assigns of members, and for paying nominees in the case herein mentioned.

8. Mode of application of profits.

9. Appointment of managers and other officers, a their respective powers and remuneration.

10. Provisions for the custody, use, and device of a seal of the society, which shall in all cases bear the registered name thereof. (a)

FORMS OF CERTIFICATE TO BE GIVEN UNDER THIS ACT.

Certificate of Registration of a Society.

I, , Registrar of Friendly Societies in [England, Scotland, or Ireland,] hereby certify that the Society, Limited, established at in the county of , is registered under the Industrial and Provident Societies Act, 1867.

Given under my hand this day of 18 .

——— Registrar of Friendly Societies.

(a) Regulations providing for most of the matters referred to in this schedule will be found in the precedents in App. II.

Certificate, to follow Rules upon the Registration of a Society established under this Act.

I hereby certify that the foregoing rules of the Society, Limited, are in conformity with law, and that the said society is duly established from the present date, and is subject to the provisions and entitled to the privileges of the Acts relating to Industrial and Provident societies.

Day of 18 .

Registrar of Friendly Societies.

Certificate of Alterations of Rules.

I, Registrar of Friendly Societies in [England, Scotland, *or* Ireland,] do hereby certify that the foregoing alterations of [*or* additions to] the rules of the Society, Limited, established at in the county of are in conformity with law, and are registered from the present date under the Industrial Societies Act.

Given under my hand this day of 18 .

Registrar of Friendly Societies.

Certificate of changed Name.

I, Registrar of Friendly Societies in [England, Scotland, *or* Ireland,] hereby certify that the registered name of the Society, Limited, established at in the county of is changed from the date hereof to the name following,— Society, Limited, and is in accordance with the Industrial and Provident Societies Acts.

Given under my hand this day of

Registrar of Friendly Societies.

FORM OF DECLARATION TO ACCOMPANY ALTERATIONS OF OR ADDITIONS TO RULES.

Register No. _____ _ .

(*State Street, Parish, and County of Place of Business.*) _____ Society, Limited, established at _____ - _____ _____ - _____ - _____ _ _____ - _ _ _ _____ - _____ - _____ _ _ _

34 & 35 VICT. c. 80.

An Act to explain and amend the Law relating to Industrial and Provident Societies.

[*16th August*, 1871.]

WHEREAS by "The Industrial and Provident Societies Act, 1867," s. 4, it is enacted, that upon such certificate as therein mentioned being granted to a society by the Registrar of Friendly Societies in England, Scotland, or Ireland, the members of such society shall become a body corporate by the name therein described, having a perpetual succession and a common seal, with power to erect, and sell, and convey, or to hold lands and buildings with limited liability:

And whereas doubts have arisen as to the operation of the said provision, and it is expedient to remove the same, and also to amend the said Act, for the giving better effect to the said provision, and for the purposes after mentioned:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Power to build, sell, lease, mortgage, &c.

1. The rules of any industrial or provident society may provide from time to time for the erection of any houses, cottages, or other buildings on any lands from time to time held by the society, and for the altering or pulling down and again rebuilding of any buildings, whether erected by the society or otherwise vested in it; and for the management, laying out, leasing, and sub-leasing (whether at rackrent on building, mining, quarrying, or improving leases, or otherwise howsoever, and whether to members of the society or other persons,) and for the disposal and sale from time to time

whether to members or other persons, of any lands or buildings for the time being held by the society; and for the appropriation of the purchase moneys, rents, and other moneys to be received in respect of any lands or buildings; and for the advancing of any moneys by the society to members on the security of real or personal property; and the rules may prescribe the forms of conveyance, mortgage, transfer, agreement, bond, or other instrument necessary for carrying the purposes of the society into execution.

As to copyholds.

2. Where any society shall have become entitled in equity to any hereditaments of copyhold or customary tenure, either absolutely or by way of mortgage or security, the lords or ladies of the manors of which the same are held from time to time, if the society shall so require admit such person or persons (not to exceed three) as such society shall appoint to be a trustee or trustees on its behalf as tenants in respect of such hereditaments, on payment of the usual fines, fees, or other dues payable on the admission of a single tenant, or may admit the society as tenant in respect of the same on payment of such special fine, or compensation in lieu of fines, and fees, as may be agreed upon between such lord or lady and the society.

Receipt endorsed on mortgage to be sufficient discharge without reconveyance

3. A receipt under the seal of a society, countersigned by the secretary, for all moneys secured to the society by any mortgage or other assurance, such receipt to be in the form specified by the rules or any schedule thereto, and to be endorsed upon or annexed to such mortgage or other assurance, shall vacate the same, and vest the estate of and in the property therein comprised in the person entitled to the equity of redemption of the same, or in such person as the society may direct, without any reconveyance or resurrender whatever; and if such mortgage or other assurance has been registered under the Acts for the registration of deeds in Middlesex, Yorkshire, or Ireland, or recorded under

the Record of Title Act, Ireland, or in the case of copyholds or lands of customary tenure, entered on any court rolls, the registrar under the said Acts respectively, or his deputy or assistant registrar in Ireland, or the recording officer, as the case may be, or the steward of the manor or his deputy respectively, shall, on production of such receipt, verified by oath of one of the witnesses thereto, enter satisfaction on the register or on the court rolls respectively of such mortgage, or of the charge made by such assurance, and shall grant a certificate either upon such mortgage or assurance or separately to the like effect, which certificate shall be received in evidence in all courts and proceedings without further proof; and such registrar, recording officer, or steward, shall be entitled to a fee of two shillings and sixpence for making the said entry and granting the said certificate; and such fee shall in Ireland be paid by stamps, and applied as the other fees of the Registry of Deeds Office and Record of Title Office are now by law directed to be paid and applied.

Confirmation of securities &c., before passing of Act, which would have been valid if made under this Act.

4. All securities given or taken, assurances and deeds executed, agreements and engagements entered into, proceedings taken, and acts done or suffered before the passing of this Act, by, to, with, in trust for, or on account of a society existing at the commencement of this Act, which, if given, taken, executed, entered into, done, or suffered respectively after the passing of this Act would have been valid, are hereby confirmed and made valid.

Construction of Act.

5. The buying and selling of land shall be deemed to be a trade within the meaning of the Industrial and Provident Societies Act, 1862, and the powers of this Act conferred on any society shall be construed as explanatory of or in addition to any powers conferred by the fourth section of "The Industrial and Provident Societies Act, 1867," and not as restricting the same.

Short title

6. This Act may be cited as "The Industrial and Provident Societies Act, 1871."

Note.—For the rules as to practice, scale of costs, fees, &c., in the county courts under these Acts, see App. I. Part II. pp. 587, 588.

30 & 31 Vict. c. 29.

An Act to amend the Law in respect of the Sale and Purchase of Shares in Joint Stock Banking Companies.

[17*th June*, 1867.]

WHEREAS it is expedient to make provision for the prevention of contracts for the Sale and Purchase of shares and stock in Joint Stock Banking Companies of which the sellers are not possessed or over which they have no control:

May it therefore please Your Majesty that it may be enacted; and be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present parliament assembled, and by the authority of the same:

Contracts for sale, &c., of shares to be void unless the numbers by which such shares are distinguished are set forth in contract.

1. That all contracts, agreements, and tokens of sale and purchase which shall, from and after the first day of July one thousand eight hundred and sixty-seven, be made or entered into for the sale or transfer, or purporting to be for the sale or transfer, of any share or shares, or of any stock or other interest, in any Joint Stock Banking Company in the United Kingdom of Great Britain and Ireland constituted under or regulated by the provisions of any Act of Parliament, Royal Charter, or Letters Patent, issuing shares or stock transferable by any deed or written instrument, shall be null and void to all intents and purposes whatsoever,

unless such contract, agreement, or other token shall set forth and designate in writing such shares, stock, or interest by the respective numbers by which the same are distinguished at the making of such contract, agreement, or token on the register or books of such banking company as aforesaid, or where there is no such register of shares or stock by distinguishing numbers, then unless such contract, agreement, or other token shall set forth the person or persons in whose name or names such shares, stock, or interest shall at the time of making such contract stand as the registered proprietor thereof in the books of such banking company; and every person, whether principal, broker, or agent, who shall wilfully insert in any such contract, agreement, or other token any false entry of such numbers, or any name or names other than that of the person or persons in whose name such shares, stock, or interest shall stand as aforesaid, shall be guilty of a misdemeanour, and be punished accordingly, and if in Scotland, shall be guilty of an offence punishable by fine or imprisonment.

Registered shareholders may see lists.

2. Joint Stock Banking Companies shall be bound to show their list of shareholders to any registered share holder during business hours, from ten of the clock to four of the clock.

Extent of Act limited.

3. This Act shall not extend to shares or stock in the bank of England or the bank of Ireland.

33 & 34 VICT., c. 61.

An Act to amend the law relating to Life Assurance Companies.

[*9th August*, 1870.]

Up to the year 1869 the efforts of Mr. Cave (Vice-President of the Board of Trade in 1868) and others to expose the rotten state of a large proportion of the life assurance business of this country, were baffled by interested opposi-

tion (a). In that year occurred the downfall of the Albert and European Companies, and the circumstances there disclosed of reckless and fraudulent management sufficiently strengthened public opinion to enable the Life Assurance Companies Act of 1870 to be carried.

This statute (which has since been amended by the two Acts passed in 1871 and 1872) has for its object the protection, as far as possible, of policy holders, shareholders, and others interested in life assurance companies, against disasters such as those which signalized the year 1869.

Its principal provisions are as follows.

By section 3, every new company (b) must, in order to obtain a certificate of incorporation, deposit a sum of 20,000*l.* with the Accountant-General of the Court of Chancery, which deposit is to be returned as soon as the life assurance fund accumulated out of the premiums amounts to 40,000*l.* A check is thus put on the practice of starting bubble life assurance companies, for the purpose of putting two or three years' fees and salaries into the pockets of directors and secretaries. Sections 5—13 contain most valuable provisions for preventing the managers of a company from concealing its true financial position. In each financial year a statement of the revenue account and balance-sheet for that year are to be prepared by every company; while a company existing at the time of the passing of the Act is compelled once in ten years, and a new company is compelled once in five years to cause an investigation to be made into its financial condition by an actuary, and an abstract of his report to be drawn up, as well as to prepare within nine months after the date of each such investigation a statement of its life assurance and annuity business. The above statements and abstract are to be deposited at the Board of Trade, and to be laid before Parliament, and printed

(a.) See speech of Mr. Cave in the House of Commons on the 28th of June, 1872, Hansard, vol. ccxii, p. 381.

(b.) See definition in s. 2.

copies must be furnished to each policy-holder and shareholder on application. Dishonest and unsuccessful companies only have anything to fear from this enactment; to others it is, whether from the point of view of policy-holder or shareholder, an unmixed benefit.

Restrictions are placed by sections 14 and 15 on amalgamations or transfers of business. In numerous cases amalgamations and transfers had been effected for the pecuniary benefit of those conducting the process, at the expense of the policy-holders and shareholders, whose money, in some instances, went to purchase a certain loss. These sections therefore require the sanction of the Court of Chancery to an amalgamation or transfer, and empower one-tenth in value of the policy-holders in any company concerned to stop it altogether; moreover, certified statements of the assets and liabilities of the companies concerned, and of the nature and terms of the arrangement and of certain other matters must be deposited with the Board of Trade.

Section 19 imposes a penalty of £50 on falsifying any statement abstract or other document required by the Act.

Section 21 is explained in a note to that section.

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as "The Life Assurance Companies Act, 1870." Short title.

2. In this Act—

The term "company" means any person or persons, corporate or unincorporate, not being registered under the Acts relating to Friendly Societies, who issue or are liable under policies of assurance upon human life within the United Kingdom, or who grant annuities upon human life within the United Kingdom: Interpretation of terms.

The term "chairman" means the person for the time being presiding over the court or board of directors of the company:

The term "policy-holder" means the person who for the time being is the legal holder of the policy for securing the life assurance, endowment, annuity, or other contract with the company:

The term "financial year" means each period of twelve months at the end of which the balance of the accounts of the company is struck, or if no such balance is struck, then each period of twelve months ending with the thirty-first day of December:

The term "Court" means, in the case of a company registered or having its head office in England, the High Court of Chancery; in the case of a company registered or having its head office in Ireland, the Court of Chancery in Ireland; in all cases of companies registered or having its head office in Scotland, the Court of Session, in either division thereof:

The term "registrar" means the Registrar of Joint Stock Companies in England and Scotland, and the Assistant Registrar of Joint Stock Companies in Ireland.

Deposit

3. Every company established after the passing of this Act within the United Kingdom, and every company established or to be established out of the United Kingdom which shall after the passing of this Act commence to carry on the business of life assurance within the United Kingdom, shall be required to deposit the sum of twenty thousand pounds with the Accountant General of the Court of Chancery, to be invested by him in one of the securities usually accepted by the Court for the investment of funds placed from time to time under its administration, the company electing the particular security and receiving the

income therefrom; and the registrar shall not issue a certificate of incorporation unless such a deposit shall have been made, and the Accountant General shall return such deposit to the company so soon as its life assurance fund accumulated out of the premiums shall have amounted to forty thousand pounds.

See. s. 1 of 34 & 35 Vic. 58, and s. 1 of 35 & 36 Vict., c. 41, infra.

Life funds separate.

4. In the case of a company established after the passing of this Act transacting other business besides that of life assurance, a separate account shall be kept of all receipts in respect of the life assurance and annuity contracts of the company, and the said receipts shall be carried to and form a separate fund to be called the life assurance fund of the company, and such fund shall be absolutely the security of the life policy and the annuity holders as though it belonged to a company carrying on no other business than that of life assurance, and shall not be liable for any contracts of the company for which it would not have been liable had the business of the company been only that of life assurance; and in respect to all existing companies, the exemption of the life assurance fund from liability for other obligations than to its life policy-holders shall have reference only to the contracts entered into after the passing of this Act, unless by the constitution of the company such exemption already exists: Provided always, that this section shall not apply to any contracts made by any existing company by the terms of whose deed of settlement the whole of the profits of all the business are paid exclusively to the life policy-holders, and on the face of which contracts the liability of the assured distinctly appears.

See s. 2 of 35 & 36 Vict., c. 41, infra.

Statements to be made by companies.

5. From and after the passing of this Act every company shall, at the expiration of each financial year of such company, prepare a statement of its revenue account for such year, and of its balance sheet at the close of such year, in the forms respectively contained in the first and second schedules to this Act.

Statements by company doing other than life business.

6. Every company which, concurrently with the granting of policies of assurance or annuities on human life, transacts any other kind of assurance or other business shall, at the expiration of each such financial year as aforesaid, prepare statements of its revenue account for such year, and of its balance sheet at the close of such year, in the forms respectively contained in the third and fourth schedules of this Act.

Actuarial report and abstract.

7. Every company shall, once in every five years if established after the passing of this Act, and once every ten years if established before the passing of this Act, or at such shorter intervals as may be prescribed by the instrument constituting the company, or by its regulations or byelaws, cause an investigation to be made into its financial condition by an actuary, and shall cause an abstract of the report of such actuary to be made in the form prescribed in the fifth schedule to this Act.

Statement of life and annuity business.

8. Every company shall, on or before the thirty-first day of December one thousand eight hundred and seventy-two, and thereafter within nine months after the date of each such investigation as aforesaid into its financial condition, prepare a statement of its life assurance and annuity business in the form contained in the sixth schedule to this Act, each of such statements to be made up as at the date of the last investigation, whether such investigation be made previously or subsequently to the passing of this Act: Provided as follows:

(1.) If the next financial investigation after the passing of this Act of any company fall during the year one thousand eight hundred and seventy-three, the said statement of such company shall be prepared within nine months after the date of such investigation, instead of on or before the thirty-first day of December one thousand eight hundred and seventy-two.

(2.) If such investigation be made annually by any company, such company may prepare such statement at any time, so that it be made at least once in every three years.

The expression date of each such investigation in this section shall mean the date to which the accounts of each company are made up for the purposes of each such investigation.

Forms may be altered.

9. The Board of Trade, upon the application of or with the consent of a company, may alter the forms contained in the schedules to this Act, for the purpose of adapting them to the circumstances of such company, or of better carrying into effect the objects of this Act.

Statements, &c., to be signed and printed and deposited with Board of Trade.

10. Every statement or abstract herein-before required to be made shall be signed by the chairman and two directors of the company and by the principal officer managing the life assurance business, and, if the company has a managing director, by such managing director, and shall be printed; and the original, so signed as aforesaid, together with three printed copies thereof, shall be deposited at the Board of Trade within nine months of the dates respectively herein-before prescribed as the dates at which the same are to be prepared. And every annual statement so deposited after the next investigation shall be accompanied by a printed copy of the abstract required to be made by section seven.

Copies of statements to be given to shareholders, &c.

11. A printed copy of the last deposited statement, abstract, or other document by this Act required to be printed shall be forwarded by the company, by post or otherwise, on application, to every shareholder and policy-holder of the company.

List of shareholders.

12. Every company which is not registered under "The Companies Act, 1862," and which has not incorporated in its deed of settlement section ten of "The Companies Clauses Consolidation Act, 1845," shall keep a "Shareholders Address Book," in accordance with the provisions of that section, and shall furnish, on application, to every shareholder and policy-holder of the company a copy of such book, on payment of a sum not exceeding sixpence for every hundred words required to be copied for such purpose.

Deed of settlement to be printed.

13. Every company which is not registered under "The Companies Act, 1862," shall cause a sufficient number of copies of its deed of settlement to be printed, and shall furnish, on application, to every shareholder and policy-holder of the company a copy of such deed of settlement on payment of a sum not exceeding two shillings and sixpence.

Amalgamation or transfer.

14. Where it is intended to amalgamate two or more companies, or to transfer the life assurance business of one company to another, the directors of any one or more such companies may apply to the Court, by petition, to sanction the proposed arrangement, notice of such application being published in the Gazette, and the Court, after hearing the directors and other persons whom it considers entitled to be heard upon the petition, may confirm the same if it is satisfied that no sufficient objection to the arrangement has been established.

Before any such application is made to the Court a statement of the nature of the amalgamation or transfer, as the case may be, together with an abstract containing the material facts embodied in the agree-

ment or deed under which such amalgamation or transfer is proposed to be effected, and copies of the actuarial or other reports upon which such agreement or deed is founded, shall be forwarded to each policy-holder of both companies in case of amalgamation, or to each policy-holder of the transferred company in case of transfer, by the same being transmitted in manner provided by section one hundred and thirty-six of The Companies Clauses Consolidation Act, 1845, for the transmission to shareholders of notices not requiring to be served personally; and the agreement or deed under which such amalgamation or transfer is effected shall be open for the inspection of the policy-holders and shareholders at the office or offices of the company or companies for a period of fifteen days after the issuing of the abstract herein provided.

The Court shall not sanction any amalgamation or transfer in any case in which it appears to the Court that policy-holders representing one tenth or more of the total amount assured in any company which it is proposed to amalgamate, or in any company the business of which it is proposed to transfer, dissent from such amalgamation or transfer.

No company shall amalgamate with another, or transfer its business to another, unless such amalgamation or transfer is confirmed by the Court in accordance with this section.

Provided always, that this section shall not apply in any case in which the business of any company which is sought to be amalgamated or transferred does not comprise the business of life assurance.

Statements in case of amalgamation or transfer.

15. When an amalgamation takes place between any companies, or when the business of one company is transferred to another company, the combined company or the purchasing company, as the case may be, shall, within ten days from the date of the completion of

the amalgamation or transfer deposit with the Board of Trade certified copies of statements of the assets and liabilities of the companies concerned in such amalgamation or transfer, together with a statement of the nature and terms of the amalgamation or transfer and a certified copy of the agreement or deed under which such amalgamation or transfer is effected, and certified copies of the actuarial or other reports upon which such agreement or deed is founded; and the statement and agreement or deed of amalgamation or transfer shall be accompanied by a declaration under the hand of the chairman of each company and the principal managing officer of each company, that to the best of their belief every payment made or to be made to any person whatsoever on account of the said amalgamation or transfer is therein fully set forth, and that no other payments beyond those set forth have been made or are to be made either in money policies bonds valuable securities, or other property by or with the knowledge of any parties to the said amalgamation or transfer.

Documents may be transferred from Board of Trade to registry of Joint Stock Companies.

16. The Board of Trade may direct any printed or other documents required by this Act, or certified copies thereof, to be kept by the registrar of Joint Stock Companies or other officer of the Board of Trade; and any person may, on payment of such fees as the Board of Trade may direct, inspect the same at his office, and procure copies thereof.

Documents to be received in evidence.

17. Every statement, abstract, or other document deposited with the Board of Trade or with the registrar of Joint Stock Companies under this Act shall be receivable in evidence; and every document purporting to be certified by one of the secretaries or assistant secretaries of the Board of Trade, or by the said registrar, to be such deposited document, and every document purporting to be similarly certified to be a copy of such deposited document, shall, if produced out of the custody of the Board of Trade or of the said registrar,

be deemed to be such deposited document as aforesaid, or a copy thereof, and shall be received in evidence as if it were the original document, unless some variation between it and the original document shall be proved.

Penalty for non-compliance with Act.

18. Every company which makes default in complying with the requirements of this Act shall be liable to a penalty not exceeding fifty pounds for every day during which the default continues; and if default continue for a period of three months after notice of default by the Board of Trade, which notice shall be published in one or more newspapers as the Board of Trade may direct, and after such publication the Court may order the winding up of the company, in accordance with The Companies Act, 1862, upon the application of one or more policy-holders or shareholders.

Penalty for falsifying statements, &c.

19. If any statement, abstract, or other document required by this Act is false in any particular to the knowledge of any person who signs the same, such person shall be liable on conviction thereof on indictment to fine and imprisonment, or on summary conviction thereof to a penalty not exceeding fifty pounds.

Penalties how to be recovered and applied.

20. Every penalty imposed by this Act shall be recovered and applied in the same manner as penalties imposed by The Companies Act, 1862, are recoverable and applicable.

Other circumstances under which company may be wound up by the Court of Chancery.

21. The Court may order the winding up of any company, in accordance with the Companies Act, 1862, on the application of one or more policy-holders or shareholders, upon its being proved to the satisfaction of the Court that the company is insolvent, and in determining whether or not the company is insolvent the Court shall take into account its contingent or prospective liability under policies and annuity and other existing contracts; but the Court shall not give a hearing to the petition until security for costs for such amount as the judge shall think reasonable shall be given, and until a primâ facie case shall also be estab-

lished to the satisfaction of the judge; and in the case of a proprietary company having an uncalled capital of an amount sufficient with the future premiums receivable by the company to make up the actual invested assets equal to the amount of the estimated liabilities, the Court shall suspend further proceedings on the petition for a reasonable time (in the discretion of the Court) to enable the uncalled capital, or a sufficient part thereof, to be called up; and if at the end of the original or any extended time for which the proceedings shall have been suspended such an amount shall not have been realized by means of calls as, with the already invested assets, to be equal to the liabilities, an order shall be made on the petition as if the company had been proved insolvent.

This section was introduced in consequence of the decision of V. C. James in *European Life Assurance Society*, 9 Eq., 122, that the Court in considering the grounds for making a winding-up order has nothing whatever to do with any question of future liabilities.

Power to court to reduce contracts.

22. The Court, in the case of a company which has been proved to be insolvent, may, if it thinks fit, reduce the amount of the contracts of the company upon such terms and subject to such conditions as the Court thinks just, in place of making a winding-up order.

Notices under this Act to policy-holders.

23. Any notice which is by this Act required to be sent to any policy-holder may be addressed and sent to the person to whom notices respecting such policy are usually sent, and any notice so addressed and sent shall be deemed and taken to be notice to the holder of such policy.

Statements, &c., to be laid before Parliament.

24. The Board of Trade shall lay annually before Parliament the statements and abstracts of reports deposited with them under this Act during the preceding year.

25. This Act shall not affect the Commissioners for the Reduction of the National Debt, nor the Postmaster General, acting under the authorities vested in them respectively by the Acts tenth George the Fourth, chapter twenty-four,* third and fourth William the Fourth, chapter fourteen, sixteenth and seventeenth Victoria, chapter forty-five, and twenty seventh and twenty-eighth Victoria, chapter forty-three. Exceptions.

* [*Altered from* forty-one, *pursuant to* 34 *&* 35 *Vict. c.* 58.]

FIRST SCHEDULE.

Revenue Account of the _____ for the year ending _____

18 . (Date.)		£ s. d.	18 . (Date.)		£ s. d.
	Amount of funds at the beginning of the year			Claims under policies (after deduction of sums re-assured) . .	
	Premiums			Surrenders	
	Consideration for annuities granted .			Annuities	
	Interest and dividends . . .			Commission	
	Other receipts (accounts to be specified)			Expenses of management . .	
				Dividends and bonuses to shareholders (if any)	
				Other payments (accounts to be specified)	
				Amount of funds at the end of the year, as per second schedule .	
	£			£	

Note 1.—Companies having separate accounts for annuities to return the particulars of their annuity business in a separate statement.

Note 2.—Items in this and in the accounts in the third and fifth schedules should be the net amounts after deduction of the amounts paid and received in respect of re-assurances.

SECOND SCHEDULE.

Balance sheet of the _____ on the _____ 18___.

Liabilities.	£ s. d.	Assets.	£ s. d.
Shareholders' capital paid up (if any) £ .		Mortgages on property within the United Kingdom	
Assurance fund		Do. do. out of the United Kingdom	
Annuity fund (if any) . . .		Loans on the company's policies . .	
Other funds, if any, to be specified . .		Investments:	
Total funds as per first schedule . . £		In British Government securities .	
Claims admitted but not paid* . . .		Indian and Colonial government securities	
Other sums owing by the company* (accounts to be specified)		Foreign government do .	
		Railway and other debentures and debenture stocks . . .	
		Do shares (preference and ordinary)	
		House property	
		Other investments (to be specified) .	
		Loans upon personal security . . .	
		Agents' balances	
		Outstanding premiums	
		do. interest	
		Cash:	
		On deposit . . . . £	
		In hand and on current account	
		Other assets (to be specified) . . .	
£		£	

Note.—These items are included in the corresponding items in the first schedule.

THIRD SCHEDULE.

Revenue Accounts of the _____ for the year ending _____

(No. 1.) LIFE ASSURANCE ACCOUNT.

(Date.)			(Date.)		
	Amount of life assurance fund at the beginning of the year			Claims under life policies (after deduction of sums re-assured)	
	Premiums after deduction of re-assurance premiums			Surrenders	
	Consideration for annuities granted			Annuities	
	Interest and dividends			Commission	
	Other receipts (accounts to be specified)			Expenses of management	
				Other payments (accounts to be specified)	
				Amount of life assurance fund at the end of the year as per fourth schedule	
		£			£

Note.—Companies having separate accounts for annuities to return the particulars of their annuity business in a separate statement.

(No. 2.) FIRE ACCOUNT.

Amount of fire insurance fund at the beginning of the year		Losses by fire after deduction of re-assurances		
Premiums received, after deduction of re-assurances		Expenses of management		
Other receipts to be specified		Commission		
		Other payments to be specified		
		Amount of fire insurance fund at the end of the year, as per fourth schedule		
	£			£

Note.—When marine or any other branch of business is carried on, the income and expenditure thereof to be in like manner stated in a separate account.

(No. 3.) PROFIT AND LOSS ACCOUNT.

Balance of last year's account		Dividends and bonuses to shareholders	
Interest and dividends not carried to other accounts		Expenses not charged to other accounts	
Profit realised (accounts to be specified)		Loss realised (accounts to be specified)	
Other receipts		Other payments	
		Balance as per fourth schedule	
	£		£

Note.—This account is not required if the items have been incorporated in the other accounts of this schedule.

FOURTH SCHEDULE.

Balancee sheet of the _____ on the _____ 18 .

Liabilities.	£ s. d.	£ s. d.	Assets.	£ s. d.
Shareholders capital			Mortgages on property within the United Kingdom	
General reserve fund (if any)			Do. do. out of the United Kingdom	
Life assurance fund*			Loans on the company's policies	
Annuity fund (if any)*			Investments :	
Fire fund			In British Government securities	
Marine fund			Indian and Colonial do.	
Profit and loss (if any)			Foreign do.	
Other funds, if any, to be specified			Railway and other debentures and debenture stocks	
	£ s. d.	£	Do. shares (preference and ordinary)	
Claims under life policies admitted but not yet paid*			House property	
Outstanding fire losses			Other investments (to be specified)	
Do. marine do.			Loans upon personal security	
Other sums owing by the company (accounts to be specified)			Agents' balances	
			Outstanding premiums	
			Do. interest	
			Cash : On deposit £	
			In hand and on current a/c.	
			Other assets (to be specified)	
		£		£

* If the life assurance fund is, in accordance with section 4 of this Act, a separate trust fund for the sole security of the life policy-holders, a separate balance sheet for the life branch may be given in the form contained in Schedule 2. In other respects the company is to observe the above form. See also note to Second Schedule.

FIFTH SCHEDULE.

STATEMENT respecting the VALUATION of the LIABILITIES under LIFE POLICIES and ANNUITIES of the to be made by the ACTUARY.

(The answers should be numbered to accord with the numbers of the corresponding questions.)

1. The date up to which the valuation is made.

2. The principles upon which the valuation and distribution of profits among the policy holders are made, and whether these principles were determined by the instrument constituting the company, or by its regulations or bye-laws, or otherwise.

3. The table or tables of mortality used in the valuation.

4. The rate or rates of interest assumed in the calculations.

5. The proportion of the annual premium income, if any, reserved as a provision for future expenses and profits. (If none, state how this provision is made.)

6. The consolidated revenue account since the last valuation, or, in case of a company which has made no valuation, since the commencement of the business. (This return should be made in the form annexed.)

7. The liabilities of the company under life policies and annuities at the date of the valuation, showing the number of policies, the amount assured, and the amount of premiums payable annually under each class of policies, both with and without participation in profits; and also the net liabilities and assets of the company, with the amount of surplus or deficiency. (These returns should be made in the forms annexed.)

8. The time during which a policy must be in force in order to entitle it to share in the profits.

9. The results of the valuation, showing—

(1.) The total amount of profit made by the company.

(2.) The amount of profit divided among the policy-holders,

and the number and amount of the policies which participated.

(3.) Specimens of bonuses allotted to policies for 100*l.* effected at the respective ages of 20, 30, 40, and 50, and having been respectively in force for five years, ten years, and upwards, at intervals of five years respectively, together with the amounts apportioned under the various modes in which the bonus might be received.

(FORM referred to under heading No. 6. in the Fifth Schedule.

Consolidated Revenue Account of the _____ for _____ years commencing _____ and ending _____.

	£ s. d.		£ s. d.
Amount of funds on 18 ,—the beginning of . .		Claims under policies (after deduction of sums re-assured)	
Premiums (after deduction of re-assurance premiums)		Surrenders	
Consideration for annuities granted . .		Annuities	
Interest and dividends		Commission	
Other receipts (accounts to be specified) .		Expenses of management . . .	
		Dividends and bonuses of shareholders (if any)	
		Other payments (accounts to be specified) .	
		Amount of funds on 18 ,—the end of the period, as per First (or Third) Schedule	
	£		£

(FORM referred to under heading No. 7. in Fifth Schedule.)

SUMMARY and VALUATION of the POLICIES of the as at 18 .

Description of Transactions.	Particulars of the Policies for Valuation.				VALUATION.			
					Value by the Table, Interest per cent.			
	Number of policies.	Sums assured and bonuses.	Office yearly premiums.	Net yearly premiums if ascertained.	Sums assured and bonuses.	Office yearly premiums.	Net yearly premiums if computed.	Net liability.
ASSURANCES.								
I. *With participation in profits.*								
For whole term of life - -								
Other classes (to be specified)								
Extra premiums payable -								
Total Assurances with profits								
II. *Without participation in profits.*								
For whole term of life - -								
Other classes (to be specified)								
Extra premiums payable .								
Total Assurances without profits								
Total Assurances . .								
Deduct re-assurances .								
Net amount of assurances								
Adjustments (if any) .								
ANNUITIES.								
Immediate . . .								
Other classes (to be specified)								
Total of the results								

The term "extra premium" in this Act shall be taken to mean the charge for any risk not provided for in the minimum contract premium. If policies are issued in or for any country at rates of premium deduced from tables other than the European mortality tables adopted by the company, separate schedules similar in form to the above must be furnished.

(FORM referred to under heading No. 7. in Fifth Schedule.)

VALUATION BALANCE SHEET of as at 18.

Dr.	£	Cr.	£
To net liability under Assurance and Annuity transactions (as per summary statement provided in Schedule 5)		By life assurance and annuity funds (as per balance sheet under schedule 2 or 4) .	
To surplus, if any		By deficiency, if any	

SIXTH SCHEDULE.

STATEMENT of the LIFE ASSURANCE and ANNUITY BUSINESS of the on the 18 .

(The answers should be numbered to accord with the numbers of the corresponding questions. Statements of re-assurances corresponding to the statements in respect of assurances, under headings 2, 3, 4, 5, and 6, are to be given.)

1. The published table or tables of premiums for assurances for the whole term of life which are in use at the date above mentioned.

2. The total amount assured on lives for the whole term of life, which are in existence at the date above mentioned, distinguishing the portions assured with and without profits, stating separately the total reversionary bonuses and specifying the sums assured for each year of life from the youngest to the oldest ages.

3. The amount of premiums receivable annually for each year of life, after deducting the abatements made by the application of bonuses, in respect of the respective assurances mentioned under heading No. 2, distinguishing ordinary from extra premiums.

4. The total amount assured under classes of assurance business, other than for the whole term of life, distinguishing the sums assured under each class, and stating separately the amount assured with and without profits, and the total amount of reversionary bonuses.

5. The amount of premiums receivable annually in respect of each such special class of assurances mentioned under heading No. 4, distinguishing ordinary from extra premiums.

6. The total amount of premiums which has been received from the commencement upon all policies under each special class mentioned under heading 4, which are in force at the date above mentioned.

7. The total amount of immediate annuities on lives, distinguishing the amounts for each year of life.

8. The amount of all annuities other than those specified under heading No. 7, distinguishing the amount of annuities payable under each class, the amount of premiums annually receivable and the amount of consideration money received in respect of each such class, and the total amount of premiums received from the commencement upon all deferred annuities.

9. The average rate of interest at which the life assurance fund of the company was invested at the close of each year during the period since the last investigation.

10. A table of minimum values, if any, allowed for the surrender of policies for the whole term of life and for endowments and endowment assurances, or a statement of the method pursued in calculating such surrender values, with instances of its application to policies of different standing and taken out at various interval ages from the youngest to the oldest.

Separate statements to be furnished for business at other than European rates, together with a statement of the manner in which policies on unhealthy lives are dealt with.

34 & 35 VICT. c. 58.

An Act to amend the Life Assurance Companies Act, 1870.

[*24th July*, 1871.]

WHEREAS by section three of the Life Assurance Companies Act, 1870, a sum of money is required in certain cases to be deposited with the accountant general of the Court of Chancery, to be invested and returned by him in manner therein directed, and it is expedient to make further provision in respect of the deposit, investment, and return of such sum:

33 & 34 Vict. c. 61.

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. Every sum required by the Life Assurance Companies Act, 1870, to be deposited with the accountant general of the Court of Chancery shall be paid into the Court of Chancery, and orders with respect to the payment of such money into and out of court, and the investment and return thereof, and the payment of the dividends and interest thereof, may be from time to time made, altered, and revoked by the like authority and in the like manner as orders with respect to the payment into and out of court, and the investment of other money, and the application of the dividends and interest thereof.

Payment into court and orders as to sums deposited under 33 & 34 Vict c. 61, s. 3.

2. Section twenty-five of the Life Assurance Companies Act, 1870, shall be construed as if the words "chapter twenty-four" were and had at and from the date of the passing of such last-mentioned Act been inserted therein in place of "chapter forty-one;" and Her Majesty's printers shall in all copies of the Life Assurance Companies Act, 1870, which may be printed after the passing of this Act, insert the words "chapter twenty-four" in the place of the words "chapter forty-one" in section twenty-five of the said Life Assurance Companies Act, 1870.

Amendment of section 25 of 33 & 34 Vict. c 61.

3. This Act shall be construed as one with the Life Assurance Companies Act, 1870, and that Act and this Act may be cited together as The Life Assurance Companies Acts, 1870 and 1871, and this Act may be cited as The Life Assurance Companies Act, 1871.

Construction and short title.

35 & 36 VICT. c. 41.

An Act to amend the Life Assurance Companies Acts, 1870 *and* 1871.

[*6th August*, 1872

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords

Spiritual and Temporal, and Commons, in this present parliament assembled, and by the authority of the same, as follows:

Deposit by company in Court of Chancery.

1. Whereas by the provisions of the "Life Assurance Companies Acts, 1870 and 1871," a life assurance company is required to pay a sum of money into the Court of Chancery by way of deposit, and the certificate of incorporation of such company is not to be issued unless such deposit has been made, and such deposit is to be returned to the company as soon as its life assurance fund amounts to the sum therein mentioned; and doubts have arisen as to the construction of the said provisions, and it is expedient to remove such doubts; be it therefore enacted as follows:

The said deposit may be made by the subscribers of the memorandum of association of the company, or any of them, in the name of the proposed company, and such deposit upon the incorporation of the company shall be deemed to have been made by and to be part of the assets of the company.

The said deposit shall, until returned to the company, be deemed to form part of the life assurance fund of the company, and shall be subject to the provisions of section four of the Life Assurance Companies Act, 1870, accordingly. The Board of Trade may from time to time make, and when made revoke, alter, or add to, rules with respect to the payment and repayment of the said deposit, the investment of or dealing with the same, the deposit of stocks or securities in lieu of money, and the payment of the interest or dividends from time to time accruing due on any such investment, stocks, or securities in respect of such deposit. Any rules made in pursuance of this section shall have effect as if they were enacted in this Act, and shall be laid before Parliament within three weeks after they are made, if Parliament be then sitting, or if

not, within three weeks after the beginning of the then next session of Parliament.

The rules framed by the Board of Trade in pursuance of this section will be found printed at the end of this Act.

2. Whereas, by section four of the Life Assurance Companies Act, 1870, it is enacted that, "In the case "of a company established after the passing of this "Act, transacting other business besides that of life "assurance, a separate account shall be kept of all "receipts in respect of the life assurance and annuity "contracts of the company, and the said receipts shall "be carried to and form a separate fund, to be called "the life assurance fund of the company, and such "fund shall be as absolutely the security of the life "policy and annuity holders as though it belonged to "a company carrying on no other business than that "of life assurance, and shall not be liable for any "contracts of the company for which it would not "have been liable had the business of the company "been only that of life assurance;" and further provisions were made by the same section, with respect to the application of the above recited part of the said section to existing companies, and doubts have arisen with respect to the construction of the said provisions, and it is expedient to remove such doubts; be it therefore enacted, **Separation of life funds.**

That the portion of section four of the Life Assurance Companies Act, 1870, above recited shall apply to every company established before the passing of that Act, provided that the Life Assurance Companies Act, 1870, and this Act shall not diminish the liability of the life assurance fund for any contracts of the company entered into before the passing of the Life Assurance Companies Act, 1870.

Whereas by section ten of the Life Assurance Companies Act, 1870, it is provided that "Every annual **Deposit of statement and abstract.**

required by 33 & 34 Vict. c. 61, s. 10.

"statement so deposited after the next investigation "shall be accompanied by a printed copy of the "abstract required to be made by section seven," be it therefore enacted that the words "next investigation" shall be construed to mean the first investigation after the passing of the said Act.

The Board of Trade shall lay before Parliament any statement or abstract of report which is deposited with them by any company, and purports to be in pursuance of the Life Assurance Companies Act, 1870, although the board are of opinion that it is not such a statement or abstract as is required to be prepared by that Act.

Winding up of subsidiary company to be ancillary to winding up of principal company.

4. Where the business or any part of the business of a life assurance company has, either before or after the passing of this Act, been transferred to another company under an arrangement in pursuance of which such first-mentioned company (in this Act called the subsidiary company) or the creditors thereof has or have claims against the company to which such transfer was made (in this Act called the principal company), then, if such principal company is being wound up by or under the supervision of the court, either at or after the passing of this Act, the court shall (subject as herein-after mentioned) order the subsidiary company to be wound up in conjunction with the principal company, and may by the same or any subsequent order appoint the same person to be liquidator for the two companies, and make provision for such other matters as may seem to the court necessary, with a view to such company being wound up as if they were one company; and the commencement of the winding up of the principal company shall, save as otherwise ordered by the court, be the commencement of the winding up of the subsidiary company; the court nevertheless shall have regard, in adjusting the rights and liabilities of the members of

the several companies between themselves, to the constitution of such companies, and to the arrangements entered into between the said companies, in the same manner as the court has regard to the rights and liabilities of different classes of contributories in the case of the winding up of a single company, or as near thereto as circumstances admit.

Where any subsidiary company or company alleged to be subsidiary is not in process of being wound up at the same time as the principal company to which it is subsidiary, the court shall not direct such subsidiary company to be wound up unless after hearing all objections (if any) that may be urged by or on behalf of such company against its being wound up, the court is of opinion that such company is subsidiary to the principal company, and that the winding up of such company in conjunction with the principal company is just and equitable.

Where any subsidiary company and principal company are being wound up by different branches of the court, the court to which appeals from such branches lie shall make an order directing in which branch the winding up of such companies is to be carried on, and the necessary proceedings shall be taken for carrying such order into effect.

An application may be made in relation to the winding up of any subsidiary company in conjunction with a principal company by any creditor of, or person interested in, such principal or subsidiary company.

Where a company stands in the relation of a principal company to one company, and in the relation of a subsidiary company to some other company, or where there are several companies standing in the relation of subsidiary companies to one principal company, the court may deal with any number of such companies together or in separate groups, as it thinks

most expedient, upon the principles laid down in this section.

This section facilitates the process of winding up in cases where one company has absorbed several other companies. The discretion vested in the court would seem sufficient to meet the objections which have been urged against this section.

Valuation of annuities and policies.

5. Where a life assurance company is being wound up by the court, or subject to the supervision of the court, or voluntarily, the value of every life annuity and life policy requiring to be valued in such winding up shall be estimated in manner provided by the first schedule to this Act, but this section shall not apply to any company the winding up of which has commenced before the passing of this Act, unless the court having cognizance of the winding up so order, which order that court is hereby empowered to make, if it think it expedient so to do, on the application of any person interested in the winding up of such company.

In *Bell's case*, 9 Eq. 706 (followed by Lord Romilly in *Holdich's case*, 14 Eq. 72), V.-C. James adopted the following method of valuing a policy. He held that, selecting an office resembling as near as possible the *Albert* (the office in which Mr. Bell was insured) in the amount of its capital or guarantee fund and its rates of premium, and finding at what premium such office would insure the life, and capitalizing the difference between that premium and the premium payable for the same amount by the insured to the *Albert*, you would have the sum payable to the insured to place him in as good a position as he would have been in if the Albert had not been wound up.

The objections to this method were in the course of the Albert Arbitration forcibly pointed out by Lord Cairns in *Lancaster's case*, Reilly's Rep. p. 90; and in that case Lord

Cairns laid down the rule which has been adopted by this section, and is set out in Schedule I.

Rules in First and Second Schedules to be rules of court.

6. The rules in the first and second schedules to this Act shall be of the same force as if they were rules made in pursuance of the one hundred and seventieth, one hundred and seventy-first, and one hundred and seventy-third sections of "The Companies Act, 1862," as the case may be, and may be altered in manner provided by the said sections, and rules may be made under the said sections for the purpose of carrying into effect the provisions of this Act with respect to the winding up of companies.

Regulation as to novations by policy holders.

7. Where a company, either before or after the passing of this Act, has transferred its business to or been amalgamated with another company, no policy holder in the first-mentioned company who shall pay to the other company the premiums accruing due in respect of his policy shall by reason of any such payment made after the passing of this Act, or by reason of any other act done after the passing of this Act, be deemed to have abandoned any claim which he would have had against the first-mentioned company on due payment of premiums to such company, or to have accepted in lieu thereof the liability of the other company, unless such abandonment and acceptance have been signified by some writing signed by him or by his agent lawfully authorized.

In winding up companies which had absorbed numerous other companies, a question soon arose as to the position and rights of a policy holder or annuitant in an absorbed company. Had he accepted in substitution for the liability of his old company the liability of the new company in which his old company was absorbed, or did he in spite of the absorption retain his hold on the assets of his old company? Or, as

by the revival of a term from the Civil Law (*a*) it was expressed—had he or had he not effected a novation, or agreed to substitute for his old contract a new contract with a third party? (*b*)

The Court of Chancery, as well as Lord Cairns and Lord Westbury, in the Albert and European Arbitrations respectively, agreed that novation is a question of intention, and that the intention is a question of fact, but great difference of opinion has existed as to the evidence of the fact.

From the Chancery decisions it may be collected that where on an amalgamation a policy holder has in substance notice that he has his election whether or not he will accept the liability of the new company in substitution for that of his old company, and then (even without any express contract) pays premiums to and takes benefits from the new company, as if he had assented to the substitution, the Court will (in the absence of the proof of the contrary) find that he has so assented. *Spencer's case*, 6 Ch. 362, and especially p. 370; *Times Life Assurance Co.*, 5 Ch. 381; *Anchor Assurance Co.*, 5 Ch. 632. In *Exp. Blood*, 9 Eq. 316, and in *Merchant's Assurance Society*, 9 Eq. 694, novation was clearly effected by the action of the holder: while in *Manchester and London Association*, 5 Ch. 640, and in *Griffith's case*, 6 Ch. 374, it was held that there was no novation.

As to annuitants, it seems that nothing short of an express contract between the annuitant and the new company, in discharge of his rights against his old company, can extinguish those rights, *Family Endowment Society*, 5 Ch. 118; *India and London Life Assur. Co.*, 7 Ch. 651.

The Chancery decisions left undetermined the point how far and under what circumstances mere standing by and

(*a*) Just. III. Inst. tit. 29 (30). Sandars, p. 485.

(*b*) On the subject of novation and the liquidation of amalgamated assurance companies, an article by C. J. Bunyon in the *Law Magazine* (N.S.) No. V, for June, 1872, may be consulted.

payment of premiums by the policy holder to a new company after notice of an amalgamation will constitute a novation; and this fact and the diversity of opinion between Lord Cairns and Lord Westbury (*a*) shew that legislation was not uncalled for.

This section then sets all questions at rest by enacting that a policy holder shall, notwithstanding any amalgamation of his old company with another company retain his hold on the assets of the latter, unless he expressly abandons it by a written agreement to that effect.

Construction and short title.

8. This Act shall be construed as one with the Life Assurance Companies Acts, 1870 and 1871; and those Acts and this Act may be cited together as "The Life Assurance Companies Acts, 1870 to 1872;" and this Act may be cited as "The Life Assurance Companies Act, 1872."

FIRST SCHEDULE.

Rule for valuing an Annuity.

An annuity shall be valued according to the tables used by the company which granted such annuity at the time of granting the same, and where such tables cannot be ascertained or adopted to the satisfaction of the court, then according to the table known as the Government Annuities Experience Table, interest being reckoned at the rate of four per centum per annum.

Rule for valuing a Policy.

The value of the policy is to be the difference between the present value of the reversion in the sum assured on the decease

(*a*) See *Kennedy's case*, and numerous other cases in the Albert Arbitration. Reilly's Rep., p. 5, &c.; and in the European Arbitration, *Coghlan's case*, Reilly's Rep., p. 46, and *Blundell's case*, p. 84.

of the life, including any bonus or addition thereto made before the commencement of the winding up and the present value of the future annual premiums.

In calculating such present values the rate of interest is to be assumed as being four per centum per annum, and the rate of mortality as that of the tables known as the Seventeen Offices Experience Tables.

The premium to be calculated is to be such premium as, according to the said rate of interest and rate of mortality, is sufficient to provide for the risk incurred by the office in issuing the policy, exclusive of any addition thereto for office expenses and other charges.

SECOND SCHEDULE.

Where an assurance company is being wound up by the court or subject to the supervision of the court, the official liquidator in the case of all persons appearing by the books of the company to be entitled to or interested in policies granted by such company, for life assurance, endowment, annuity, or other payment, is to ascertain the value of such policies, and give notice of such value to such persons, and any person to whom notice is so given shall be bound by the value so ascertained unless he gives notice of his intention to dispute such value in manner and within a time to be prescribed by a rule or order of the court.

"THE LIFE ASSURANCE COMPANIES ACTS, 1870 to 1872."

Board of Trade Rules.

The Board of Trade, in pursuance of the powers conferred upon them under the first section of "The Life Assurance Companies Act, 1872," have made the following rules with respect to the payment into the Court of Chancery, and repayment of the deposit required to be made by a life assurance company, in pursuance of the provisions of the Life Assurance Companies Acts, 1870 and 1871; the investment of the deposit in securities, the deposit of stocks or securities in lieu of money, and the payment of the interest or dividends from time to time accruing due on any such stocks or securities.

1. In these rules the term "the Court" means the High Court of Chancery in England, and the word "company" means a company as the same is defined in the second section of the Life Assurance Companies Act, 1870.

2. Where any company is required in pursuance of "The Life Assurance Companies Acts, 1870 to 1872," to deposit the sum of £20,000 with the Accountant-General of the Court of Chancery, the said Company, or the subscribers of the memorandum of association of the said company or any of them, as the case may be (in these rules referred to as the promoters), may make application to the Board of Trade for a warrant, and the Board of Trade may thereupon issue their warrant to the promoters for such payment into court, which warrant shall be a sufficient authority for the company or persons therein named to pay the money therein mentioned into the Bank of England, in the name and with the privity of the said Accountant-General, and for that officer to issue directions to such bank to receive the same, to be placed to his account there, *ex parte* the company mentioned in such warrant, according to the method (prescribed by statute or general rules or orders of court or otherwise), for the time being in force respecting the payment of money into the said court, and without fee or reward.

Provided that in lieu wholly or in part of the payment of the money, the promoters may bring into court, as a deposit, an equivalent sum of bank annuities, or of any stocks funds or securities in which cash under the control of the court is for the time being permitted to be invested, or of exchequer bills, the value thereof being taken at the price at which the promoters originally purchased the sums as appearing by the broker's certificate of that purchase; and in that case the Board of Trade shall vary their warrant accordingly by directing the transfer or deposit of such amount of stocks funds securities or exchequer bills by the persons therein named, into the name or to the account of the said Accountant-General in trust to attend to the orders of the court, *ex parte* the company mentioned in such warrant.

3. At any time when the office of the Accountant-General of the Court of Chancery is closed, a deposit under these rules may nevertheless be made in the manner and subject to the regulations provided with respect to deposits by companies by section 38 of the Lands Clauses Consolidation Act, 1845.

4. Where money is so paid into the Court of Chancery, the court may, on the application of the company or the persons named in the warrant of the Board of Trade, or of the majority or survivors of such persons, order that the same be invested in such stocks funds or securities as the applicants desire or the court thinks fit.

5. In the subsequent provisions of these rules, the term "the deposit fund" means the money deposited, or the stocks funds or securities in which the same is invested, or the bank annuities, stocks funds securities or exchequer bills transferred or deposited, as the case may be, and the term "the depositors" means the company or persons named in the warrant of the Board of Trade authorizing the deposit, or the majority of survivors of those persons, their executors, administrators, or assigns.

6. The court shall, on the application of the depositors, order the deposit fund to be paid transferred or delivered out to the applicants, or as they direct, so soon as it is proved to the satis-

faction of the court that the life assurance fund of the company, in respect of which the deposit is made, amounts to the sum of 40,000*l.*

7. The depositors shall be entitled to receive payment of the interest or dividends from time to time accruing on or in respect of the deposit while in court. And the court may, from time to time, on the application of the depositors, make such order as may seem fit respecting the payment of the interest or dividends accordingly.

8. The issuing in any case of any warrant or certificate relating to deposit or to the deposit fund, or any error in any such warrant or certificate, or in relation thereto, shall not make the Board of Trade, or the person signing the warrant or certificate on their behalf, in any manner liable for or in respect of the deposit fund, or the interest or dividends accruing on the same, or any part thereof respectively.

9. Any application under these rules to the Court of Chancery shall be made in a summary way by petition.

W. R. MALCOLM.

BOARD OF TRADE,
28th August, 1872.

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who may be summoned, mode of summoning and practice generally under s. 115, see note to that s., p. 339.

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